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ABSTRACT

This teacher's manual accompanies a course on labor relations for managers of small and medium-sized towns. Seven instructional modules are included. Module 1 provides an introduction to the curriculum, including an overview of the content/course methodology and a discussion of the industrial relations function. Module 2 discusses the methodology of collecting and evaluating data by focusing on the following topics: information and its role in negotiations; strategy and assessment of information needs in a competitive labor market; and making information available. Collective bargaining and public policy are covered in module 3, which includes such topics as resolution of conflict in labor management relations and the role of federal and state law in public sector labor relations. Strategy and tactics of the bargaining process are presented in module 4. Module 5 discusses how to live under agreements by discussing management decisions and actions for effective implementation of the agreement as well as the due-process clause of labor relations. Local policy considerations are covered in module 6, and module 7 contains special case studies. Each module contains the following elements: overview, objectives, instructor's notes, lecture outline, lecture/discussion topics, lecture materials, resources and references, and materials to be distributed. (BM)

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LABOR RELATIONS FOR MANAGERS OF SMALL AND MEDIUM-SIZED CITIES

MODULES 1 - 7
INSTRUCTOR'S MANUAL

Developed by

SCHOOL OF MANAGEMENT
CASE WESTERN RESERVE UNIVERSITY

THEODORE M. ALFRED, PRINCIPAL INVESTIGATOR

Under Contract to

THE URBAN MANAGEMENT CURRICULUM DEVELOPMENT PROJECT
THE NATIONAL TRAINING AND DEVELOPMENT SERVICE
5028 Wisconsin Avenue, N.W.
Washington, D.C. 20016

Funded by

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Package VIII

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LABOR RELATIONS FOR MANAGERS OF SMALL AND MEDIUM-SIZED CITIES

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INTRODUCTORY

MANUAL

LABOR RELATIONS FOR MANAGERS OF SMALL AND MEDIUM-SIZED CITIES

Prepared by
Theodore M. Alfred

LABOR RELATIONS FOR
MANAGERS OF SMALL
AND MEDIUM-SIZED CITIES
Package VIII

Developed by

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LABOR RELATIONS FOR MANAGERS OF SMALL AND MEDIUM-SIZED CITIES

Background and Outline of the Program

Objectives and Overview

Objectives

The primary objective of the program is to help improve the administration of labor relations in small and medium-sized municipalities by expanding the knowledge and understanding of participating municipal managers. A secondary objective is to provide a forum in which individuals from contiguous municipalities can develop relationships helpful to the future of their labor relations function.

The fifty-one hour curriculum covers topics the originators considered of primary concern to labor relations practitioners in the public sector. The program was developed on the premise that its utility to municipal managers would be a function of its relevance to the problems they can expect to encounter. As a consequence, heavy reliance is placed on the contribution of information and experiences by participants. Further, the instructors felt that the participants would have to be active partners in the development of materials, particularly in the determination of priorities and in the relevance of various possible topics. The sum of these factors was a curriculum designed to maximize the participation of those in attendance. One of the consequences of the participative model used is that, in many sessions, it proved most difficult to capture on paper what, in fact, occurred in the continuing give and take between instructors and participants. The result is some unevenness between modules with respect to the extent of the content summarized.

The material included in the instructors' and participants' manuals presented here will, upon examination, be found to vary also in methodology. The primary reason is that this diversity reflects the usefulness to the program objectives of a variety of expertise. Different subjects require different pedagogies and these requirements are reflected in the modules developed. As discussed below, we believe that this diversity is an asset and it is recommended in the organization of instruction.

The twenty-four participating municipal managers were high in their praise of the usefulness of the program to their own practice of labor relations management. We feel that future users of these materials can be equally successful if they utilize the modules in this package as direction and guides; build a maximum of participation into the sessions; bring in all the local materials they can; and utilize a diversity of experts acquainted with the laws and customs of the municipality and state in which the program is conducted.

Assumptions Concerning Participants, Instructors, and Program Setting

The intended audience is a group of managers from small and medium-sized municipalities (less than 75,000 population). More specifically, participants should be those individuals having prime responsibility for creating or administering a municipality's labor relations. Most should be from contiguous municipalities which deal with some organized employee units. That is, the students should face similar problems in a common context.

The program is assumed to occur in a university environment with the principal instructor an expert in labor relations. Because the materials are not intended to be a text book on labor relations, they cannot be used as such with success. The instructor need not be a university faculty member, but is assumed to possess up-to-date knowledge of labor relations concepts. Many advanced and scholarly practitioners undoubtedly can meet this requirement. For the instructor to be effective in dealing with students' problems and with the analysis of experiences, he or she must possess direct experience as a practitioner, consultant, or mediator.

It has been recommended that a diversity of experts be used in the program. In our case, an expert labor lawyer discussed legal problems in the State of Ohio; a city manager with an advanced degree and up-to-date knowledge discussed local policy considerations; an experienced arbitrator discussed the bargaining process;

and an information specialist discussed the collection and evaluation of data.

We strongly recommend the participative mode of operation for the program, despite the fact that we were less successful in carrying out our own plans than we had hoped. Participants were stimulated by the opportunity to collect data from their own situations, bring them into the class, and have them discussed. It was particularly useful to have individuals bring entire cases from their municipality for discussion. The quality of input varied widely among participants but all of them could share in learning from some of the excellent discussions which occurred.

We submit the customary logistical requirements for discussion and participant learning: chairs and tables should be arranged in rectangles or circles--rows of chairs bespeak orderliness and obedience rather than openness and involvement. Several chart pads, handy blackboards, hot coffee, and notebooks are customary paraphernalia. A University certificate was appreciated evidence of participants' accomplishments.

In the program from which these materials were derived, a class of twenty practitioners met for a period of seven months in seventeen class sessions lasting three hours each. Meetings were weekly for the first nine meetings and bi-weekly thereafter. The perceived need for the course was high because of growing public sector unionization in the area. The participants represented both sexes, a diversity of ethnic backgrounds, and a wide range of ages. There were department chairmen, assistant city managers, mayors, and others with varying degrees of responsibility for labor relations functions.

Content of the Curriculum

The curriculum is divided into seven modules with primary focus on collective bargaining and the framework in which it takes place. Introductory sessions deal with the curriculum's methodology, the setting for municipal labor relations, and the benefits and problems of data collection and use in collective bargaining. A theory of bargaining is then postulated in order to help public managers understand basic bargaining strategy. Once the basic bargaining process is covered, the course turns to pragmatic problems facing public managers. Hours of instruction are in parentheses after the title of the module.

Module I: Introduction to the Curriculum (4½)

This module presents the participative learning methodology of the curriculum. It also covers the organization of the municipal labor relations function and the establishment of labor relations policies.

Module II: The Methodology of Collecting and Evaluating Data (4½)

Included here are (1) the role of information in collective bargaining; (2) how to assess local informational needs; (3) how to define competitive labor market areas; (4) alternative strategies for generating data; (5) how to start, use, and maintain an area-wide data bank; and (6) the relationship between independent and governmental data-collection actions.

Module III: Collective Bargaining and Public Policy (12)

This module includes a discussion of the sources and possible solutions to labor-relations conflict. It discusses the difference between the human resource and pluralistic orientations. This section also covers some of the behavioral aspects of collective bargaining. It ends with a section on the role of federal and state laws and their impact on collective bargaining.

Module IV: The Bargaining Process: Strategy and Tactics (12)

This module begins with a discussion of a behavioral model of bargaining dealing with strategy and tactics. The various kinds of bargaining units and the implications of these in terms of bargaining power are considered. Following this is a discussion of the scope of bargaining, the legally permissible forms of bargaining, the law of public employee strikes, the rules of bargaining, agenda preparation, classification of tactics and the use of information, persuasion, and coercion in bargaining.

Module V: Living Under a Labor Agreement (6)

Module V contains material relevant to management actions and decisions for effective implementation of the agreement, problems of interface with the civil service system, and principles of preparing for grievance arbitrations.

Module VI: Local Policy Considerations (6)

Module VI reflects a general discussion that relates collective bargaining to the level of public expenditures and sources of revenue, the allocation of public expenditure, productivity and political accountability.

Module VII: Special Topics and Laws in Employee Relations (6)

Module VII includes cases written by project staff and participants in the program.

As indicated, this program cannot be successful unless the instructor has teaching experience and is knowledgeable concerning public sector labor relations as a practitioner, scholar, or consultant-arbitrator. Such an individual will pick and choose among the materials provided according to his own experience and expertise and the local situation. The following discussion may help:

First, two copyrighted cases used in the program are not reproduced in the modules. The first of these cases is used in Module III and is titled "Atlanta Sanitation Strike." It is strongly recommended that this case be considered because it provides participants an early model for their later development of cases. The case is interesting on its merits. It involves the problems of a Jewish mayor trying to resolve a strike by his black supporters. The various political and personal factors are described as well as actual bargaining efforts on the part of the union. The case can be ordered from the Intercollegiate Case Clearing House:

Atlanta Sanitation Strike
Case Number 9472652
Intercollegiate Case Clearing House
Soldiers Field
Boston, Massachusetts 02163

In Module IV, the instructor utilized a mock bargaining case involving the city of Hornell, New York and the Hornell Police Association. Mock bargaining situations are interesting and fun to the participants but are also time-consuming and relatively more difficult for an instructor to handle. The materials were too lengthy and involved to be included here. While the bargaining situation itself is only about fifteen pages in length, there is another 125 pages of appendices which include copies of contracts, etc. We would recommend that one copy of this case be ordered from the author and reviewed before a decision is made to order it for all participants. The citation is:

"Mock Bargaining Case: City of Hornell, New York
and the Hornell Police Association."
Professor David B. Lipsky
School of Industrial and Labor Relations
Cornell University
Ithaca, New York 14850

In the summer of 1977 an article appeared in the New Yorker magazine on the collective bargaining history and current financial problems of the City of New York. This is interesting background material and topical. The citation is:

Ken Auletta, "A Reporter at Large: More for Less,"
New Yorker, August 1, 1977.

It is usually extremely difficult to use some one else's lecture material. To read material in front of a class is deadening. For this reason, we would urge the users of these materials to follow the general outline and use the participative devices and questions listed, but to use the lectures as a basis for the preparation of material by the instructor responsible for a particular session.

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Faculty members of the School of Management and School of Law at Case Western Reserve University taught the original group of participants and wrote their experiences as modules. They are:

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Associate Professor
School of Law

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Dean
School of Management

John E. Drotning
Professor and Head
Division of Industrial Relations

Paul F. Salipante, Jr.
Assistant Professor of
Industrial Relations

Robert C. Schlegel
Lecturer in Management Information Systems
and Industrial Relations

Dallas M Young
Project Director
Professor of Labor Relations

In addition to the above, Richard V. Robinson, City Manager of Ross Township, Pittsburgh, Pennsylvania, taught the sessions on local policy considerations.

The faculty was aided in its design of the program by an Advisory Board which met regularly with the faculty and responded ably to proposals. Several members of the Board visited the program and met with the students. Board members were:

Mr. William E. Lahman, Secretary-Treasurer
Greater Cleveland Regional Transit Authority

Mr. Robert McConnell, Director of Industrial Relations
Diamond Shamrock Corporation

Mr. Allan R. Mills, Executive Secretary
Cuyahoga County Mayors and City Managers Assoc.

Mr. Samuel S. Perry, Attorney at Law
Perry and Heard Company, L.P.A.

Mr. Fred Pizzedaz, Executive Director
Northeast Ohio Areawide Coordinating Agency

Mr. Melvin S. Schwarzwald, Attorney at Law
Gaines, Stern, Schwarzwald & Robiner Co., L.P.A.

Dr. Glenn Varney, Director
Management Center
Bowling Green University

INSTRUCTOR'S MANUAL

INTRODUCTION TO THE CURRICULUM

Prepared by
Theodore M. Alfred
and
Paul F. Salipante, Jr.

Module Number One
of
LABOR RELATIONS FOR
MANAGERS OF SMALL AND
MEDIUM-SIZED CITIES
Package VIII

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Class 2. The Industrial Relations Function

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MODULE I

INTRODUCTION TO THE CURRICULUM

This module seeks to ascertain participants' needs which can be met by the course and introduces participants to the methods to be utilized in the course (Class 1). It also provides background information on the nature of the industrial relations function and the basic process of setting rules to govern the employer-employee relationship (Class 2). Class 1 and Class 2 require 3 hours and 1-1/2 hours, respectively.

Resources Required

As the participants are split into small groups in Class 1, that session benefits from the presence of one instructor (to serve as discussion leader) for every 6-8 participants. For the same reason, a separate room should be available for each group of participants. Each room should be equipped with a flip chart to record participants' comments.

Module I - Class 1

CONTENT AND METHODOLOGY OF THE COURSE

I. Objectives

- to acquaint participants with each other and the faculty both personally and in terms of their role in municipal labor relations.
- to ascertain priorities of learning needs from participants' perspectives, individually and collectively.
- to make participants aware of the subjects to be covered in terms of their needs and priorities and to make adjustments in emphasis in the program based on their needs.
- to establish for participants their role in the educational program. In particular, to acquaint them with "action-research" based education, the basic methodology of the curriculum.
- to acquaint participants with their tasks for the following week.

II. Instructor's Note

Prior to Class 1 all participants should have received and prepared Preparation Items A and B (see Materials to be Distributed, below). Item B helps the participants in preparing introductory remarks about themselves and their positions, and is also useful as background for the subsequent class's discussion of the industrial relations function. Item A is used directly as the focus of the small group discussions.

Introductions (1 hour): Drawing on their responses to Item B, participants should each take a few minutes to introduce themselves, describing their municipality and the role they fill in it and any prior experience they have with labor relations. As most participants are likely to be in (quasi-) political positions, they will be quite used to talking about themselves and their experiences! The instructor should keep the introductions moving to remain within the one hour time limit. If possible, a hand-out should be distributed containing a one-paragraph summary on each position.

Small Group Discussions (45 minutes): Break the class into groups of 6-7 people, each group to be led by an instructor. (An alternative is to designate one participant as group leader and recorder.) Each group discusses members' responses to Preparation Item A, focusing especially on situations where individuals felt less confident of their capabilities. From this discussion each group should identify areas of concern, stating them in terms of problem areas which could potentially be covered in the course. The instructor (group leader) should record on flip charts the list of problem areas identified for later presentation to the whole class.

From our experience, there is no problem in eliciting participation. It was quite easy for many individuals to consume 10-15 minutes outlining a particular point of view or problem. The problem for the discussion leader is to abbreviate, organize and channel participation. At the end of the discussion, the discussion leader should review the comments written on the flip chart and get agreement that they accurately reflect what was said.

Time should be allowed for each group's members to chat informally and get to know one another. A coffee break before or after the small group discussions facilitates this.

Discussion of Course Content and Methods (1 hour): Taking no more than 5 minutes apiece, each group leader presents the problem areas identified by his group, along with any suggestions concerning how the problems could be addressed in the course. The instructor should then distribute a preliminary course outline, describing the major topics to be covered in the course. There should then be a brief general discussion of any gaps which appear in the curriculum, based on the problem areas identified by the sub-groups.

It was our experience that revisions of the curriculum could not be made on the spot, given the time available. What can be ascertained is where more or less time should be spent. In our case, the preliminary outline covered perhaps 85% of the problem areas identified. Prior to the next class, the instructor(s) should take the comments from the small group discussions and prepare a new outline to be distributed in Class 2 (see Preparing a Revised Outline, below).

From a discussion of the course content the instructor should lead into the lecture material on Participants' Role in the Program (below). The lecture should take about 20-25 minutes, allowing time for questions and discussion. The instructor should stress that the participants will be expected to investigate their municipalities' labor relations experiences, introduce these into the class discussions, and relate them to the material presented.

Hand-Out of Assigned Material (10 minutes): A number of hand-outs (contained in the Students' Manual) must be made in preparation for Class 2. The two readings to be distributed are "The Emergence of Public Sector Collective Bargaining" and "A Management Labor-Relations Policy." Note to participants that the former reading provides general background to the discussion (in Class 2) of the industrial relations function. The second reading is to be used by participants as a resource in responding to Preparation Item C, which asks participants to search for or prepare written material on their municipalities' employee relations policy. Be certain that participants understand what is to be done in Item C and how the second reading relates to that task.

(If the next class session is to contain Class 1 from Module II, hand out and describe the assignments for that class.)

Prior to adjournment, collect the written responses to Preparation Items A and B.

Preparing a Revised Outline: Between Classes 1 and 2, the instructor(s) should study the written comments from the small group discussions and the responses to Item A. Taking these into account, the course priorities should be reassessed and a new outline drawn up. Many of the problem statements can be incorporated into the curriculum as specific issues to be raised in particular topic areas.

The instructor should also use Item A and the small group comments to identify issues that specific managers will be asked to pursue. In accord with the participative learning approach, several individuals should be asked to contribute by preparing case descriptions or making class presentations on the issues they have identified as critical to themselves. These contributions should be scheduled into the course and noted on the course outline.

An Alternative Procedure for Assessing Participants' Needs: A method for assessing needs which may be used as an alternative to the above is for each manager to respond to the "Assessment of Labor Relations Needs" instrument (next page). The instrument could be distributed to and collected from participants prior to the first meeting, and used by the instructor to draw up a course outline. In such a case, the Small Group Discussions section of Class 1 could be skipped.

The instructor may want to require each manager to respond in column (b) to all the items whether or not the manager's municipality had had experience with the particular labor relations activity. Those activities with a high rating in (b) but no check in (a) would indicate the managers' perceptions of their future needs and would probably be less accurately rated than the activities with which they have had experience.

Instrument for Assessment of Labor Relations Needs

a) Place a check next to each of the labor relations activities below with which your municipality has experience.

b) For each of the activities checked, rate the degree of improvement needed in your municipality's capabilities in order to deal adequately with problems in that area of activity. Use the following rating scale.

1 Needs no Improvement	2	3 Needs some Improvement	4	5 Needs much Improvement

Activity	(a) Experience	(b) Rating of Need for Improvement
1. Handling union organization and recognition efforts.	☐	____
2. Preparing for bargaining negotiations.	☐	____
3. Negotiating an agreement.	☐	____
4. Calculating the cost of an agreement.	☐	____
5. Evaluating the impact of an agreement on municipality's finances.	☐	____
6. Evaluating the impact of an agreement on ability to deliver services.	☐	____
7. Coordinating employee policies with groups within your municipality's government.	☐	____
8. Coordinating employee policies with governmental units outside your municipality's government.	☐	____
9. Accounting to public on employee relations issues.	☐	____
10. Administering agreements with unions, including handling grievances.	☐	____
11. Communicating on a day-to-day basis with unions.	☐	____
12. Planning long-range employee policies.	☐	____
13. Other (specify)________________	☐	____

III. Lecture Material

Participants' Role in the Program

The Objective of the Program

Your objectives and participation in this program are to improve your capacity to handle labor relations and personnel problems in your individual communities. Those of us teaching in the program, in addition to helping you learn, have an objective of improving our own understanding of the problems of labor relations in municipalities and the practices and processes which can be used to carry out an effective labor relations function. The basic test of whether we all succeed in this process is whether or not you learn material which you are able to apply in your municipality. The remainder of this short lecture is devoted to trying to help you understand the methodology we are going to follow in this program to help you learn.

Individual and Organizational Change

Learning to implement new managerial practices and philosophies, that is, to change our behavior, and that of our organizations, does not come easy. And that is as it should be. If we were individually capable of rapidly learning and changing our behavior, life would become quite unpredictable and likely very unstable. Thus, it is likely a healthy fact that we are reluctant learners, but it would be extraordinarily unhealthy if, as adults, we lost our capacity to learn altogether.

Fortunately, we are capable of learning. The best of learning occurs under conditions which allow us to understand ourselves and the organizational situations we are in, to obtain exposure to new perspectives, knowledge, and ideas; to test the new knowledge against our existing understanding and then to incorporate that knowledge in new forms of behavior where we are persuaded by our mind and our experience that the new directions are useful. As a consequence, learning new patterns of practice in this program will involve much more than listening to lectures.

Action-Research as a Teaching Methodology

Several teaching and learning processes will be utilized in this program. There will be lectures occasionally from outside people, and there will be assigned readings and discussion of them. In addition, we expect a good deal of learning to occur in an action-research methodology.

What do we mean by action-research? Action-research is, fundamentally, research which is undertaken for the purpose of change rather than for the purpose of collecting knowledge alone. Let me provide an example from another context.

Consider the situation of a manager from a major company who is dissatisfied with the staffing practices being followed in his division. He had read an article which outlined a set of staffing practices and procedures thought to be useful in finding matches between individuals and jobs. He contacted the author of the article and asked, "How could we go about installing such practices in my area?"

The author's response was that the manager should establish an "action-research" project aimed at changing the staffing system. The procedures to be followed were as follows:

> First, find a group of people interested in changing the practices of the organization and give them the responsibility and authority to decide on needed changes and implement them.
>
> Second, this group should carefully research existing practices and evaluate them from the point of view of everyone in the organization as well as their own.
>
> Third, examine two or three alternative sets of policies and procedures.
>
> Fourth, choose what appear to be, logically, the most useful practices and test them during a trial period in the organization.
>
> Finally, if the test generates acceptance on all the criteria that had been established, adopt the procedures permanently.

In the process of the above project, all involved learned a great deal about staffing systems, so some knowledge was generated in the traditional research manner. However, the fundamental objective and accomplishment were changing the organizational staffing system and individuals' behavior in it. We intend to follow a similar process in this program. That is, we will:

> Ask you to do homework assignments which help you examine the labor relations circumstances and policies of your organizations.
>
> Second, we will ask you to bring materials on your municipalities to class for general discussion.

Third, we will present general models of labor relations policy, practices, and procedures.

Fourth, we expect you to be constantly and mentally testing your own current practice against those presented in the class by the teacher and other participants. When a new practice survives this test, you will have learned.

The above process involves you in a learning process in many ways other than as listener. You will be a "researcher" in that you will be collecting data about your organization. You will, at times, be a teacher in that we will expect you to tell others about your own situation and what works or does not work there. The classroom methodology that is implied by these roles is one of occasional lectures, and a lot of discussion.

Finally, we ask that each of you examine a particular situation in your organization and write it up as a "case study" in labor relations. This situation may be historical or current. It may be very complicated in the form of a complete case history of a negotiation with a union or it may be relatively simple and short such as the documentation of a grievance and its disposition.

Those cases which seem most representative and of general interest will be the focal point of class discussion at various points in the program.

It is our expectation that this emphasis on your experiences and your situations will maximize the extent to which you can judge the utility of alternatives for your community and incorporate them in new practice.

IV. Materials To Be Distributed

The following materials are all included in the Student's Manual. Items A and B are to be prepared by participants prior to Class 1. Item C and the two readings from Class 2 are to be distributed in Class 1 and prepared for Class 2. They are included with the Class 2 material.

Preparation Item A
Preparation Item B

PREPARATION ITEM A

Provide an example (from personnel and labor relations) of a situation where you felt most confident and sure of your capacity to manage and a situation where you felt least confident and unsure of your capacity.

Most confident:

Least confident:

PREPARATION ITEM B

NAMES (SELF AND MUNICIPALITY) ______________________________

SIZE OF MUNICIPALITY ______________________________________

NO. OF UNIONS, IF ANY _________.

1. Describe your role (authority and responsibility) relative to others for:

   A. The daily administration of labor and personnel relations.

   B. Contract negotiations, if any.

2. Have your responsibility and authority been written and/or codified? If so, please provide a copy.

3. To whom do you report and who reports to you?

4. How long have you been involved in

   a) municipal government?

   b) municipal labor relations?

MODULE I - CLASS 2

THE INDUSTRIAL RELATIONS FUNCTION

I. Objectives

- to acquaint participants with some of the weaknesses and strengths of alternative forms of organization for carrying out the industrial relations function.
- to encourage participants to analyze critically their municipality's organization.
- to establish the concepts of policies, rules and multilateral bargaining as central to public sector industrial relations practice.
- to test the reality (in participants' experience) of the above concepts.
- to acquaint participants with the extent and nature of the policies and rules in their municipalities.

II. Instructor's Note

Class 2 requires a 1-1/2 hour session. (It can easily be combined with the 1-1/2 hour session for Module II-Class 1).

The class starts with a 45-minute lecture and discussion of management's organization of the industrial relations function. In preparation for this lecture, the instructor should review participants' responses to Preparation Item B, handed in during Class 1. The instructors should draw on any direct experiences they have had in the organization of the industrial relations function and should encourage the participants to discuss their experience. Instructors may want to familiarize themselves with the PERL publication by Frank P. Ziedler, New Roles for Public Officials in Labor Relations, Public Employee Relations Library, No. 23, Chicago; International Personnel Management Association, 1970. See especially pp. 27-29.

Unfortunately, the 45 minutes allotted to this material in the current curriculum seems too brief. Our experience was that as many as two sessions might well go into a revised curriculum. The reasons for this recommendation are several. First, the preparation items (B and C) revealed the tip of a disorganization iceberg in that the majority of individuals' duties were not written or spelled out and there was some ambiguity with respect to their authority and responsibility generally as well as in the industrial relations function. Secondly, there was a high level of interest in the problems or organization and alternative processes for carrying them out.

If additional time is devoted to the topic of organization, the instructor should distribute to participants further material. One reading could be the PERL volume mentioned above. Others could be "The Impact of Collective Bargaining on Management" and "Guidelines for Government Management in the Organization and Management of Labor Relations," both contained in Collective Bargaining for Public Managers (State and Local): Reference Material, prepared by the Civil Service Commission (see Materials To Be Distributed, below, for full reference).

The second 45-minute segment of Class 1 is a lecture-discussion of municipalities' policies and rules. The instructor draws on the material gathered by participants in response to Preparation Item C, summarizing on a blackboard or flip chart the types of rules and policies participants found in use in their municipalities. Following this summarization, the instructor should cover the nature of policies and rules, and the multilateral nature of the rule-setting process. To do so, the instructor must be familiar with Dunlop's writings on the "web of rules" and Kochan and Wheeler's multilateral bargaining model (full references follow the Lecture Material, below). The diagram contained in the Lecture Material should be put onto the blackboard during the course of the lecture.

It was our experience that about one-half of the participants did not find any written policies and wrote their own statements. Almost all of these statements were on the general policy/philosophy level. Clarifying the distinction between such statements and the actual rules (specific provisions) is therefore important, especially since the literature provided to the managers in preparation for the assignment (the mock policy document) uses the term "policy" for both.

The instructor may want to link the material in Module I to that in Module II. If so, see Linkage to Module II at the end of the Lecture Material, below.

III. Lecture Content Outline

Class 2

The Industrial Relations Function

I) Organizational Aspects of the Industrial Relations Function

- determinants of industrial relations organization
- outside forces
- an evaluation of an industrial relations organization
- summary

II) Setting Employee Relations Objectives and Rules

- summarization of rules from participants' municipalities
- rules and policies
- multilateral rule setting
- linkage to Module II

NOTE: This outline is included in the Student's Manual.

Lecture Material

ORGANIZATIONAL ASPECTS
of the
INDUSTRIAL RELATIONS FUNCTION

Because our exploration into the industrial relations function is just beginning, these remarks concerning organization will be quite general and serve only as an introduction. Clearly, there are many facets of municipal industrial relations which are unique to a particular municipality but still important and deserving of attention. For example, one manager here has a perplexing problem with regard to organization for negotiations. Two of his elected council members are also members of the Union with which he negotiates and he is required to obtain council approval of guidelines for negotiations. The inevitable consequence has been that the union has preknowledge of his bargaining position and negotiations are virtually impossible. Such individual problems will be discussed by us in future sessions and we will confine ourselves here to discussing organizational aspects relatively common to all.

Determinants of Industrial Relations Organization

The first and most influential determinant of your industrial relations organization practice will be the organizational practices of your municipality generally. Thus, if authority and responsibility for municipal administration tend to be highly centralized in the mayor, industrial relations authority and responsibility will tend to be centralized also. On the other hand, if a good deal of delegation has been practiced, we will tend to find delegation of authority and responsibility in industrial relations matters as well. If supervisors, for example, have little direct work authority but refer decisions generally to the City Manager's Office, it would be surprising indeed if they could exert much authority and responsibility in the industrial relations area. Such centralization may be a highrisk strategy but the point here is that consistency in these matters is useful, if not inevitable.

A second significant determinant of the organization of this function is size. In general, it can be argued that the larger the municipality the greater the pressure for decentralization of authority and responsibility to the unit level and the greater the pressure for codification and institutionalization of a common industrial relations practice. Clearly, it becomes more demanding and difficult to obtain the needed uniformity of rules and administration as the number of personnel units becomes larger. And if anyone here does not believe reasonable uniformity in personnel and industrial relations practice is necessary, he has some rude awakenings ahead. The law, if not common sense, demands that individuals be treated equally as well as fairly.

A third significant influence is the philosophy of management practice that prevails in your municipal administration. Whatever the size of your municipality, administration of its affairs is susceptible to more or less centralization of authority, more or less centralization of responsibility, and information for decision making may be centralized or decentralized, and adequate or inadequate. One of the significant variables determining these variations is the general assumption your management has concerning the ability of lower-level management to exercise authority and responsibility effectively. In turn, this assumption often reflects the attitudes key managers have regarding the capability of individuals generally, their responsiveness to challenge, and capacity to learn.

Outside Forces

There is a series of outside factors which will influence the nature of your organizational practice. Foremost among these are government and state regulations. The existence or nonexistence of state laws protecting those municipal employees who desire collective-bargaining rights will serve as an obvious example of the impact of the legal structure. What takes place in the communities surrounding you and, indeed, what takes place in other aspects of your own community will have a significant influence on this function. If you are a highly-unionized and industrialized municipality, the degree of union-management harmony or conflict in the industrialized sector will have its echo in your own administration.

The above three factors, broadly stated, can be seen at work in every municipal organization. Here are some opinionated statements regarding some aspects of what I believe constitutes "useful" practice.

An Evaluation of an Industrial Relations Organization

Most of you, whether you represent a municipality of 2,000 or 60,000, do not have a written description of your own authority and responsibility. I would take this as evidence that there is relatively little written concerning the division of authority and responsibility regarding industrial relations in your municipality generally. My first point regarding the organization of industrial relations in an "ideal" situation, is that the structure of authority and responsibility should be well understood by those involved. It is possible that such understanding exists although nothing is written, but it is unlikely. Thus, you and your mayor or city manager should at some point sit down and put in writing what your general policies and objectives are in the industrial relations area and what is the general nature of the authority and responsiblity structure you have for carrying them out.

My second point is that in organizational matters within the municipality, authority and responsibility should be decentralized to the extent possible within your municipal code and other laws and regulations. There are situations within which I would not delegate a lot of authority, but for the average-size municipality I would hazard a guess that we have too strong a tendency to centralize in these matters. The reasons for decentralization here are little different from those existent in industry. Decentralization helps develop the capacity of your lower and low-level management groups, generally provides for quicker decision making and decisions that will be better so long as your personnel are competent, aware of the objectives of the municipality, and in possession of the necessary information to make the decision.

The last point above is important. That is, that those entrusted with decision-making power must have information related to the decision as well as an understanding of the objectives to be served. Thus, in an "ideal" organization, not only do first-line supervisors have the authority and responsibility to make many personnel decisions, and training in the objectives being served, but they must have information about the contract, laws, and specifics of the situation in order to make a decision in the best interests of the organization. This is one of the reasons we are putting in this series educational material on the organization of information.

It should be emphasized that "maximizing" decentralization does not mean total decentralization. Very often problems are generated which have organization-wide consequences and should not be decided by an individual in one area. This is particularly true when the problem "breaks new ground" and there are few precedents to go on. Those decisions should be bucked upstairs and made there.

Finally, no one should be assigned authority and responsibility in an area until he has been provided the minimal tools necessary to carry them out. This may, and often does, involve training programs of supervisors in the industrial relations function and a continual "training attitude" on the part of key managers to help supervisors develop their capacity to exercise authority wisely and carry their responsibilities gracefully.

Summary

Again, these have been introductory remarks intended to serve as a general framework for the continuing series of discussions which constitute this development program. The administration of employee relations in organized and unorganized settings can no longer be left to chance. Where specific attention is not given to the function, the administration of personnel affairs often is susceptible to the organizational disease of inequitable treatment, high personnel turnover, and low morale, not to mention legal action.

SETTING EMPLOYEE-RELATIONS OBJECTIVES AND RULES

Summarization of Rules from Participants' Municipalities

The following are instructions for summarizing the rules on the blackboard. The responses from one class in which this was done are included as illustration.)

a. Find out from the managers how many have existing written policies, how many ended up writing their own policy statement, and how many did both. Break down the responses by size of municipalities:

		Existing	None
Size of Municipality	> 30,000	3	1
	< 30,000	5	5
		8	6

b. To what employee units did the policies apply?

	Unionized, Organized	All Units	Differentiated by Units
Already Written	1	7	8
Wrote Own	1	5	

What policies, if any, applied to the other units?

c. What was the content of the policy statements? Get examples from both existing and just-written policy statements. Categorize as general or specific.

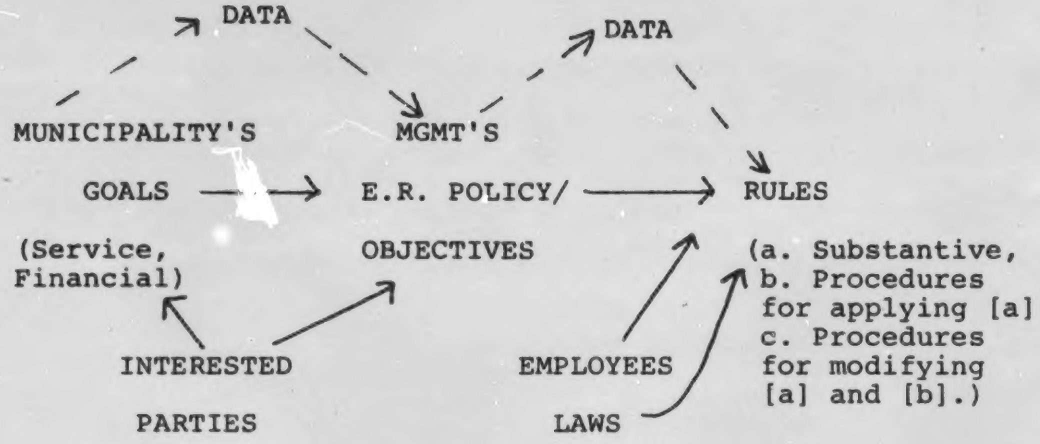
General Goals/Objectives/ Philosophy	Specific Provisions
harmonious relations	management rights and responsibilities
responsibility of each dept. for good service	remuneration
promote employee welfare	working conditions
	grievance procedures

Rules and Policies

Statements of municipalities' employee-relations policies can be divided into two categories: (1) general objectives or philosophy (e.g., harmonious relations, promote employee welfare) and (2) specific provisions (e.g., wage rates, grievance procedures).

Specific provisions can be termed rules. A web of rules (Dunlop) essentially defines the employer-employee relationship. Three types of rules are required (see diagram below).

Policy is a term best reserved for general objectives. Management's employee relations (E.R.) policy (in combination with legal constraints and the views of employees) should determine the rules. If management has no such policies, then by default each individual in management can create his own policies, leading to conflicting policies and rules, with employee feelings of inequity the likely result.


DATA
DATA
MUNICIPALITY'S
GOALS
(Service,
Financial)
MGMT'S
E.R. POLICY/
OBJECTIVES
RULES
(a. Substantive,
b. Procedures for applying [a]
c. Procedures for modifying [a] and [b].)
INTERESTED PARTIES
EMPLOYEES
LAWS

Multilateral Rule-Setting

Management's employee relations policies are, in turn, determined by the municipality's goals, chiefly service and financial. The E.R. objective most likely to follow from these goals is high productivity (good service at low financial cost).

Unfortunately for management, goals and hence E.R. policy are set not only by management (administrators) but also by a variety of interested parties, including elected officials and influential segments of the community. If general E.R. policy is not agreed to by the influential parties, they may interfere in the management-employee process of setting rules, often at the time of wage setting. That is, the process may become multilateral rather than bilateral, usually with negative consequences for management.

Problems with setting E.R. policy include getting the most important parties to agree to a package of objectives and to agree not to interfere directly with the rule-setting process. Getting agreement may involve making concessions on other goals. Another problem is deciding whether the policy should be written--the more explicit and unambiguous it is, the more likely some parties are to object. Vaguely worded statements are a common result.

Linkage to Module II (Data Collection)

E.R. policy helps define the need for data. Objectives define criteria for evaluating E.R. success, so data can be gathered on these criteria (e.g., productivity compared to other municipalities). The municipality's goals help determine what data are needed to set E.R. policy (data such as the incidence and consequences of unionization in similar municipalities). Most closely related to this program's study of data gathering, E.R. objectives in combination with employees' demands determine what data are gathered for use in the rule-setting process (e.g., objective of maintaining productivity means gathering data on labor costs; preventing unionization by offering good benefits and wages means obtaining data on current contract provisions in nearby municipalities).

References

1. Dunlop, John T. "An Industrial Relations System." Chapter 1 in Industrial Relations Systems, New York: Holt, Rinehart & Winston, Inc., 1958.

2. Kochan, Thomas A. and Wheeler, Hoyt N. "Municipal Collective Bargaining: A Model and Analysis of Bargaining Outcomes." Industrial and Labor Relations Review. 29 (1), October, 1975, 46-66.

3. Rosen, Harold S. and Solano, Richard V. Employee Relations Policy in Local Government. Public Employee Relations Library, No. 35. Chicago: International Personnel Management Association, 1971.

IV. Materials To Be Distributed

The materials below (included in the Student's Manual) are to be prepared by participants prior to Class 2. Note the Questions on the Readings page which follows the readings. These questions should be used to provide a focus during the readings. Written responses need not be prepared.

Preparation Item C
"The Emergence of Public Sector Collective Bargaining."
"A Management Labor Relations Policy."
Questions on the Readings

(Both readings are from: U.S. Civil Service Commission, Bureau of Training, Labor Relations Training Center. Collective Bargaining for Public Managers (State and Local): Reference Material. Washington, D.C.: U. S. Government Printing Office, No. 006-000-00844-5.)

The following is to be distributed in Class 2 during the first lecture-discussion:

"Some Observations Regarding the Organization of the Personnel and Industrial Relations Function."

PREPARATION ITEM C

Bring to the next meeting whatever written material your municipality has regarding its employee-relations policies. If there is none, write in on this page your view of what the actual employee-relations policies are in your municipality. The mock document on policy which you received (Reference 1: see list at end of this module) provides examples of policy statements.

THE EMERGENCE
OF
PUBLIC SECTOR COLLECTIVE BARGAINING

U. S. CIVIL SERVICE COMMISSION
BUREAU OF TRAINING
LABOR RELATIONS TRAINING CENTER
WASHINGTON, DC 20415

THE EMERGENCE OF PUBLIC SECTOR COLLECTIVE BARGAINING

INTRODUCTION

Trade Union membership among employees of all levels of government – federal, state, local – experienced a phenomenal rate of growth during the decade of the 1960's. The early years of the 1970's show no lessening of this trend. This growth is the result of many change factors including (1) the nature and make-up of the American economy, (2) the growing role of government in our society, (3) the legal status of public sector unionism, (4) the attitudes and demographics of public employees, and (5) new attitudes and techniques on the part of many unions and employee associations. This paper will relate to and analyze this wide-spread emergence of public sector collective bargaining.

EARLY HISTORY OF PUBLIC SECTOR UNIONISM

Union membership and activity among employees of government is traced to the early days of this Republic. Employees of Naval Shipyards and Army Arsenals organized into unions during the early part of the 19th century. The first recorded evidence of a government employee work stoppage occured in 1835-36, when employees at the Washington and Philadelphia Navy Yards struck for the ten-hour day and for general redress of their grievances. Organization of these workers and other public employees during this period was localized and concentrated primarily among craft employees in the building, metal, printing, and maritime trades. There were no national unions, as such, during this period; however, loosely coordinated government employee job actions, demonstrations, and political agitation resulted in improved working conditions. Among these were:

1840 – President Van Buren issued an Executive Order establishing the 10-hour day for Federal employees.

1861 – Congress passed legislation providing that wages of Navy Yard employees should be based on the prevailing rate in private establishments in the general vicinity of the Navy Yards.

1868 – The 8-hour day with no loss of pay was established for Federal employees.

1883 – Congress passed the Pendleton Act (Civil Service) establishing the Merit System in the Federal Service.

The last years of the 19th Century and the early ones of the 20th Century saw the formation of national unions of public employees. The National Association of Letter Carriers was established in 1889 as the first national postal union. Postal clerks also formed a national union in 1889. In 1904, the International Association of Machinists formed District No. 44 to administer the affairs of its Federal employee members. Many craft unions with public employee members had participated in the founding convention of the American Federation of Labor (AFL) in 1886, and in 1908 some of these formed the Metal Trades Department.

In 1906, the United Federation of Postal Clerks joined the AFL, becoming the first exclusively Federal union to do so. In 1913, the National Alliance of Postal Employees (now the National Alliance of Postal and Federal Employees) was organized as an industrial union of postal employees taking into membership all postal employees regardless of craft identity.

In 1917, the AFL chartered the National Federation of Federal Employees. NFFE was a unique phenomenon on the Federal scene at the time because it, too, was granted an industrial jurisdiction with the right to accept into membership any Federal government worker, irrespective of craft or occupational speciality. In 1931, NFFE withdrew from the American Federation of Labor over a difference of opinion concerning the appropriateness of wide-spread government use of position classification. The AFL countered by chartering another national government-wide union, the American Federation of Government Employees (AFGE) that same year.

On the state and local level, many of the craft unions accepted into membership appropriate craft employees. In 1916, the AFL chartered the American Federation of Teachers (AFT) and in 1936, the American Federation of State, County, and Municipal Employees

(AFSCME). Government employee associations and independent unions also were established. Some were organized as strictly local organizations; others functioned on a national basis.

EARLY LEGAL STATUS

Public sector unionism, like its private sector counterpart, has historically had a difficult and tenuous status in the eyes of the law. Trade unions were originally treated as "criminal conspiracies" under Anglo-Saxon common law. The first break in this doctrine of unions as criminal conspiracies, per se, occured in 1842 when the Massachusetts Supreme Court ruled that a union's legality must be judged on its actions and goals rather than on its mere existence. Other states' courts eventually followed this decision.

During the administrations of Presidents Theodore Roosevelt and William Howard Taft, a series of "gag rules" were issued at the Federal level. These Executive Orders prohibited Federal employees, either individually, or collectively through their organizations, from lobbying in Congress regarding pay, working conditions, or other matters. In addition, they specified that Federal employees were not to " . . . respond to any request from either House of Congress except through or as authorized by the agency head concerned." In response to these "gag rules" Congress enacted the Lloyd-LaFollette Act in 1912, granting postal employees (and, by extension, all Federal employees) the right to form and join labor organizations, petition or lobby Congress for redress of their grievances, and to furnish information to members of Congress. The Lloyd-LaFollette Act remains, with the exception of the laws barring strikes against the government, the only Federal statute on labor-management relations with government-wide application to the Federal Service.

The Kiess Act of 1924 established the principle of collective bargaining over wages for the printing trades employees of the Government Printing Office. Employees of the Alaskan National Railroad, the Tennessee Valley Authority, and scattered units of the Department of the Interior have had collective bargaining rights dating to the 1930's. However, when Congress enacted the National Labor Relations Act (Wagner Act) in 1935, establishing for the first time the public policy that "employees shall have the right to organize and bargain collectively," public employees were excluded from its coverage.

Some states permitted public employee union membership through legislation or Attorneys General decisions; others prohibited it. During the formative growth years of private sector collective bargaining, no state provided a legal basis and/or administrative machinery for public sector collective bargaining; all states prohibited striking by public employees, by statute or common law. When Congress amended the NLRA in 1947 with the Taft-Hartley Amendments, its sole reference to public employees was the following:

> "It shall be unlawful for any individual employed by the United States or any agency thereof including wholly owned Government Corporations to participate in any strike. Any individual employed by the United States or any such agency, who strikes, shall not be eligible for reemployment for three years by the United States or any such agency."

This ban was codified in 1955 into Title V of U.S. Code, and striking against the Federal government was also made a felony punishable by a fine of $1,000 and imprisonment up to a year.

EARLY GOALS

Although denied the legal right to collective bargaining granted to their private sector counterparts, early public employee organizations survived and grew in numbers and influence. Often victims of political patronage and/or refugees from the unstable economic periods of high unemployment, public employees and their unions looked to merit system legislation as the means to provide a measure of job security. Patronage dispensers saw unionization of public employees and the establishment of merit systems as a threat to their control of public jobs. With the enactment of civil service merit system legislation, public employee unions sought its extention and refinement. They also sought to promote and maintain efficiency in the public service and to advance the interest of public employees.

Their primary method of operation was lobbying. Unions in the Federal service, especially the postal unions, maintained an effective lobby on Capitol Hill. They experienced some success in improving wages, working conditions, pensions, and correcting inequities in the Federal service. At the same time, many of these organizations undertook political action programs to provide the necessary political support for their legislative activities. Similar methods were employed at the state and local levels of government.

Many early civil service advocates assumed that enactment of merit system laws was sufficient to solve individual employee problems and to define employee-employer relationships. However, most of these laws did not initially provide a method for handling employee grievances and correcting unsatisfactory conditions of employment. They related almost exclusively to appointment and promotions based on merit and fitness and discharge for cause with appeal to a civil service board. They provided no avenue, no procedure, for the redress of public employee grievances.

Higher wages, increased job security and other improved conditions of employment won by private sector unions had an impact on public employee organizations. Though merit systems provided a measure of job security, public employees discovered that a collective bargaining contract in industry often provided more security. Others saw the trade union movement in the public sector as a source of strength in the struggle against the spoils system. Collective bargaining contracts in industry provided automatic wage increases and also wage increases geared to the cost of living. Wages in the public sector generally lagged behind those paid for similar jobs in industry and few provisions existed for increases in the cost of living. Private sector unions had won premium pay for overtime and employer-paid fringe benefits. In the public sector, wage increases were often geared to a forthcoming election or periodic civil service merit increases. Additionally, the methods employed by the government in improving working conditions were one-sided. The public employer unilaterally determined any change. No system was available for employee participation in these determinations. To many public employees, the distinctions between a public and private employer seemed academic.

As the orientation of public employee organizations changed, their membership grew and so did their power. This power was exercised to stabilize union membership and obtain a measure of security for the union. Successful efforts were made to secure payroll deduction of members' dues with direct payment to the union treasury. In the 1950's, many statutes and ordinances were enacted and executive orders issued which provided "check-off." Automatic deduction of dues helped to stabilize membership and provided a regular source of needed income. Regular income helped pay for the staff to organize more members.

GROWTH OF PUBLIC SECTOR EMPLOYMENT

Public employees were certainly there to be organized. Beginning after World War II and accelerating at an ever faster rate, the public sector of our economy steadily increased its share of total employment vis-a-vis the private. Increasing population, increasing affluence amidst persistent poverty, increasing demands for new and/or increased services coupled with a revolution in traditional production industries caused by cybernetics contributed to the shift from blue collar production-oriented employment to white and grey collar service-oriented jobs. During the 20 year period from 1951 to 1971, all levels of public employment increased from just under six million to approximately 13.3 million. This growth rate of 112 percent can be compared to a growth rate of only 41% for the non-government sector of our economy. Today, six out of every ten new jobs are government jobs. Most of this growth has occurred, not in Federal government employment which grew only 15% from 1951 to 1971, but in state and local jobs which grew by 175% during the twenty year period.

THE EXPLOSION OF PUBLIC SECTOR COLLECTIVE BARGAINING

In the Federal sector, the National Federation of Federal Employees (Ind.) had experienced the following growth: 1920 – 38,000; 1935 – 65,000; 1939 – 75,000; 1960 – 53,000. Its AFL-CIO rival the American Federation of Government Employees (AFGE) had experienced a similar pattern: 1936 – 18,000; 1940 – 30,000; 1960 – 70,000. In fact, by 1961, according to a study by the President's Task Force on Employee-Management Relations, there were forty labor organizations with membership among Federal employees and dealing with Federal agencies. Included among these – in addition to those already mentioned – were organizations such as the National Association of Alcohol and Tobacco Tax Field Officers, the National Customs

Service Association, the Overseas Education Association, the Organization of Professional Employees of the Department of Agriculture, the International Association of Fire Fighters, the American Federation of Technical Engineers, the National Alliance of Postal Employees, the International Association of Machinists, the International Brotherhood of Electrical Workers, the American Federation of State, County and Municipal Employees, the Air Traffic Controllers Association, and the International Printing Pressman and Assistants' Union of North America. It should be noted that these organizations cover the spectrum of various types of employee organizations – craft unions, postal unions, associations, unions based on occupation or employing agency, and industrial-type unions. Many were affiliated with AFL-CIO, and others were non-affiliated (independent). It has been estimated that approximately one-third of all Federal employees were members of unions or employee associations at this time.

At the state and local level more notable trends had developed. By 1959, the American Federation of Teachers (AFT), AFL-CIO had approximately 50,000 members. Increasing numbers of local transportation systems had become public, bringing into the public sector large numbers of members of the transit unions. The American Federation of State, County and Municipal Employees (AFSCME), AFL-CIO had reached the 200,000 member mark by 1962. The International Association of Fire Fighters (IAFF), AFL-CIO also had a large membership. Non-public sector AFL-CIO unions had also become increasingly aware of public employees. As the private sector economy continued its change, many unions experienced decreasing rates of growth or actual losses of membership. Thus, the public sector came to be looked upon as a potential area for growth. Two unions in particular should be cited in this regard – The Laborers International Union, AFL-CIO, and the Service Employees Internation Union, AFL-CIO. Independent employee organizations and "professional associations" shared in this membership growth and these organizations were also, obviously, subject to many of the same pressures and conditions faced by the unions.

Thus, by the late 1950's and early 1960's, several factors which had evolved over the years seemed to come together to form a "critical mass" which needed only some additional catalyst to ensure the explosion. That impetus came from three executive and legislative actions which occurred within a relatively brief period of time. (1) In 1958, Mayor Robert Wagner of New York City, (appropriately, the son of the author of the National Labor Relations Act which had granted private sector employees collective bargaining rights in 1935) issued an executive order providing a measure of collective bargaining to the employees of that city. (2) The following year, 1959, saw the state legislature of Wisconsin enact provisions which extended to county and municipal employees of that state the protection and administrative machinery of its state Labor Relations Act.

(3) Approximately one-third of all Federal employees belonged to unions or employee associations by 1961; thus, the parties to a labor-management relationship were there, and to some extent, on a permissive basis, they were dealing with one another. What was needed was a bridge to span the gap resulting from the absence of a government-wide system of rights and responsibilities for collective dealings between the unions and the employing agencies. This "bridge" was destined to be President John F. Kennedy's Executive Order 10988, "Employee Management Cooperation in the Federal Service."

Shortly after his inauguration in 1961, Kennedy appointed a Task Force chaired by Secretary of Labor, Arthur Goldberg and including John Macy, Chairman of the Civil Service Commission. The Task Force collected and analyzed available information on current practices in labor relations, held hearings in Washington and six cities at which union leaders and members of the public presented their views, distributed questionnaires to agencies and unions and evaluated the responses, and prepared several reports that provided background information for policy development.

In developing its recommendations, the Task Force looked to experience in the private sector, other publi jurisdictions, and the labor relations systems of foreign countries. It concluded that while there was much to learn from other systems, and particularly the private sector model, only some of those policies and practices should immediately be applied.

On November 31, 1961, the Task Force reported its findings along with specific recommendations. The findings and recommendations became the basis for Executive Order 10988 which was issued January 17, 1962. Executive Order 10988 established a basic pattern for labor-management relations (called at that time, "employee-management relations") for Federal employee labor organizations and Federal agency management. It provided for three levels of union recognition: informal, formal, and exclusive, based on the representative strength of the union. The concepts of the exclusive bargaining unit and the negotiated agreement were introduced. The right of Federal employees to join or not join a union of their choice was affirmed. A bar was placed on the negotiation of a union shop arrangement; however, a measure of union security was introduced with provision for union dues withholding. (Application of this recommendation had to be delayed pending clarification of statutory authority for such arrangements). The resolution of impasses was left to the parties; however, the use of arbitration in interest disputes was barred. The Department of Labor was assigned responsibilities to assist in the resolution of representation disputes. Responsibility for implementation of the program was vested in the head of each department and agency, with the Civil Service Commission given a leadership role in providing guidance, management training, and program evaluation.

These three actions, which occurred in New York City, Wisconsin, and the Federal sector, considered together, can be identified as providing the initial sparks which enabled the public sector collective bargaining explosion to occur. While it can most certainly be argued that the explosion would have occurred anyway, these executive pronouncements and legislative enactments established legal precedents and procedures for collective bargaining in government.

For the first few years following the issuance of E. O. 10988, statistics on Federal union growth was preponderantly among postal workers, who had been well organized even before E. O. 10988. However, by mid 1963, 180,000 non-postal workers were in exclusive bargaining units; by 1965, the number had risen to 320,000; and by 1967, 630,000 non-postal Federal employees were exclusively represented by unions, 339,000 blue-collar and 291,000 salaried white collar employees. Combined, they represented 29 percent of all non-postal employees of the executive branch of the Federal government.

Following the executive order in New York City and the legislation in Wisconsin, and especially after the Federal Executive Order, many state and local governments began to respond with some form of legal authorization for dealing collectively with employees. The nature of this authorization took many shapes and forms. Some state and local executives issued executive orders. Others obtained favorable Attorneys–General decisions. Other jurisdictions produced legislative enactments. The nature and scope of these enactments varied. Some were comprehensive in terms of classes of employees covered, scope of bargaining, and administrative apparatus. Others were less comprehensive covering, for instance, only local employees, only teachers, or only fire fighters. Many provided only permissive language, permitting collective bargaining but not making it mandatory. Some required the parties to "meet and confer," rather than collectively bargain.

The public sector unions and the use of collective bargaining continued to grow. In some cases, this growth was because of legislation; in other cases the growth was in spite of inadequate or no legislation. By 1965, the AFT had over 100,000 dues-paying members; by 1967 AFSCME climbed past 300,000; in 1968, the Fire Fighters totaled over 130,000. This increasing growth of public sector unions and the demands for collective bargaining on the part of public employees were both the results of and causes of significant changes.

Faced with increasing demands for improvements in wages, hours, and other terms and conditions of employment from the rank and file members, and often at the same time faced with public managers unwilling or unable to grant such demands, public sector unions became increasingly more militant. In 1958, there were only fifteen work stoppages of public employees involving a loss of 7,520 man days. In 1966, there were 142 strikes, a nine-fold increase involving 105,000 workers and a loss of 455,000 man days. Two years later the number had almost doubled – to 254 strikes involving 202,000 workers and a loss of one-half million man days. These disputes occurred despite the fact that no state allowed its employees the right to strike and some provided criminal and/or financial penalties for doing so.

The increase in members and militancy on the part of the public sector unions also had tremendous impact on the traditional public employee associations. For example, the National Education Association, which counts over a million classroom teachers in its membership, had existed for over a half-century as a "professional association." The NEA in its early history emphasized activities centering on better schools and improved status for teachers. It frowned upon any overt activity of state and local affiliates lobbying for higher teachers' salaries and shunned contacts with the labor movement as inconsistent with its professionalism. However, goaded by the militant success of its AFL-CIO rival, the American Federation of Teachers, first in New York City and then in most large urban school systems, the NEA did an about-face. 1961 was the first time the NEA convention called for "discussions" between local school boards and its local affiliates. By 1962, NEA began using the terms "professional negotiations" and "professional sanctions" to back them up. By 1965, NEA had gone on record in favor of exclusive recognition and in 1967 replaced its previous disdain of work stoppages and resolved to support striking affiliates. Similar changes in goals, attitudes and methods occurred within the American Nurses Association, the Fraternal Order of Police as they did in the many state and local government employee associations, such as the New York Civil Service Employees Association, the California State Employees Association, the California League of County Employees Associations, each with over 100,000 members. Thus, today most employee associations cannot be significantly differentiated from the traditional unions in terms of methods, goals or militancy.

The Federal unions also continued their rapid growth and, in many instances, revealed that they too were becoming more militant. By late 1969, the final year that E. O. 10988 was in force, exclusive union representation covered just under one and a half-million Federal employees – 54% of all executive branch employees including postal employees. The six largest non-postal unions in the Federal government represented exclusively the following number of employees:

American Federation of Government Employees (AFGE), AFL-CIO	482,357
Metal Trades Council (MTC), AFL-CIO	75,243
National Federation of Federal Employees (NFFE), Ind.	58,676
National Association of Government Employees (NAGE), Ind.	58,239
National Association of Internal Revenue Employees (NAIRE), Ind.	38,518
International Association of Machinists (IAM), AFL-CIO	34,139

Executive Order 10988 was widely praised and well accepted by unions, agencies, members of Congress and the public. Under its provisions, unions representing Federal employees gained in membership strength, acquired membership stability through dues withholding, and obtained representation status for broad segments of the Federal employee population.

But what was a satisfactory program in the early 1960's became awkward and poorly adapted as the program moved to maturity. It began to creak under its own weight. Dissatisfaction with the provisions of the Order were expressed by unions and management. The dissatisfactions were not the same, but the problems were common.

Late in President Lyndon B. Johnson's administration, a review committee was established to look at the Federal labor management program. The "Wirtz Committee" thoroughly examined the Federal program. It found much that was praiseworthy, but it also found room for improvement. It held open hearings in Washington, D.C. in late October 1967, with more than fifty agency and labor organization representatives and individuals presenting their views. In addition, more than fifty other organizations submitted written statements. The Committee considered, among other matters, proposed changes in levels of recognition, a central agency to establish policy and interpret the order, the role of supervisors, the scope of bargaining, and dispute resolution by independent third parties.

By late spring of 1968, the Committee had reached substantial agreement on recommendations to the President, and its report and recommendations were substantially completed. However, no action was taken under the Johnson Administration.

With the new administration, the question of changes in the labor-management relations program again came up for reconsideration. President Nixon appointed a committee which used as its basis for analysis the report of the "Wirtz Committee" and the testimony of agencies and unions at hearings which had been conducted by that committee. The Report and Recommendations of the Interagency Study Committee were forwarded with a letter of transmittal to the President on September 10, 1969. President Nixon accepted the recommendations, and on October 29, 1969, issued Executive Order 11491, "Labor-Management Relations in the Federal Service," effective on January 1, 1970.

Executive Order 11491 retained the basic principles and objectives of Federal labor-management relations established in 1962 by Executive Order 10988. It is evolutionary in nature, preserving the continuity of the system of relationship and unfair labor practice disputes assigned to the Assistant Secretary of Labor for Labor-Management Relations; the creation of the Federal Service Impasses Panel to be the ultimate authority for the resolution of bargaining impasses; the elimination of multiple levels of recognition; and the clarification of the status of supervisors under the program. Other major provisions related to extension of coverage; exclusion of certain categories of security and agency internal audit personnel; special provisions on recognition for guards and "professionals"; incorporation of provisions for binding arbitration of employee grievances and disputes arising over the terms of an agreement; use of official time for negotiation of an agreement; changes in procedures for certification of representation; strengthening of the standards of conduct and union reporting requirements; revisions of the code of fair labor practices; changes in the scope of negotiation and agreement approval provisions; and the incorporation of procedures for the resolution of negotiability disputes.

Under E.O. 11491 union growth continued, as did union militancy. Today, of major Federal unions, only the National Federation of Federal Employees (NFFE) maintains a "no-strike" pledge in its Constitution; ten years ago all Federal unions had them. Federal employees have done more than just remove "no-strike" pledges; they have engaged in strikes and other job actions. In recent years the following known strikes have occurred among Federal employees:

1968
- Hunter's Point Naval Shipyard, San Francisco (Cafeteria Workers)
- St. Elizabeth Hospital, Washington, D.C.
- TVA, Athens, Alabama

1969
- Kingsbridge Postal Station, Bronx, N.Y.
- Air Controllers, A National Strike, Two Days

1970
- FAA-PATCO
- Post Office
- D.C. Nurses' Association

1971
- D.C. Sanitation

1972
- D.C. Teachers
- IRS – Detroit Service Center
- D.C. Jail Guards

The largest of these strikes, the 1970 postal strike which involved over 200,000 employees, resulted in the passage of the Postal Reorganization Act which, among other things, removed postal employees from coverage under E.O. 11491, and extended to them the protections and rights of the NLRA except for the right to strike and broadened the scope of bargaining to include wages, hours and all other terms and conditions of employment except pensions and union security.

WHERE WE STAND TODAY

At this time unions and union-like associations represent more than one-third of all public employees in exclusive bargaining units. This can be compared with exclusive union representation of approximately 24 percent of all employees in this country. In the Federal government, unions represented 56% of the civilian executive branch non-postal work force as of November 1, 1973; 88% of all postal employees; 84% of all blue collar (wage grade) employees; and 47% of all white collar (General Schedule) employees. These precentages of representation are even higher when non-eligibles – managers, supervisors, etc. – are factored out.

At the state and local level, at least 38 states have some type of public employee relations legislation or executive order covering one or more employee classes, types or occupations. Many local political jurisdictions also have similar ordinances or orders.

In those units of government where there is no legal basis for collective bargaining, de facto bargaining does occur because of union political strength.

Today, AFSCME has over 700,000 dues paying members and represents in collective bargaining over 1,000,000 public employees. The Fire Fighters have more than 160,000 members, a 30% growth in six years. The Laborers International Union and the Service Employees International Union, both primarily private sector unions with total memberships in excess of 500,000, today each count over 100,000 public employees among their ranks. The NEA has over 1.5 million members, while the AFT has more than 400,000 members. Similar statistics could be cited for other unions and associations.

Another phenomenon occurring today is the closing of ranks and consolidation of union power. In 1971 five postal unions merged to form the American Postal Workers Union and today the APWU has discussed merger with the Communication Workers of America (CWA) which predominantly represents private sector telephone employees. The Professional Air Traffic Controllers affiliated with the Marine Engineers Benevolent Association, AFL-CIO, a small but wealthy union that has also recently absorbed several city and county employee associations. Both AFSCME and the SEIU have recently granted charters to formerly independent employee associations in California, Hawaii, Rhode Island and other locations. AFSCME, the NTEU, and the NEA have also formed a coalition for political action and lobbying. At the state and local level several affiliates of NEA and AFT have merged, the largest of these bringing nearly 200,000 teachers in New York State into a single organization.

A final point on where we stand today is the fact that seven states – Pennsylvania, Hawaii, Montana, Minnesota, Oregon, Florida, and Alaska – now permit by law a limited right to strike.

THE FUTURE

It can be anticipated that collective bargaining and public employee unionism will continue to grow at all levels of government. Some currently with no legislation will either voluntarily or under pressure pass enabling public sector collective bargaining legislation. States with current laws will refine them, establishing more administrative machinery, more clearly define roles, bargaining units, and unfair practices, and grant some right to strike. As unions continue growing by organizing the unorganized and mergers, their resources and expertise for bargaining and lobbying will also increase. One of their continuing goals will be national legislation covering public employee management relations and the creation of a NLRB-type Public Employee Relations Board.

A
MANAGEMENT
LABOR RELATIONS
POLICY

NOTE: This is a mock document.

U. S. CIVIL SERVICE COMMISSION
BUREAU OF TRAINING
LABOR RELATIONS TRAINING CENTER
WASHINGTON, D.C. 20415

A MANAGEMENT LABOR RELATIONS POLICY

Policies of the Service

Employee participation in establishing personnel policies

The Service recognizes that the participation of its employees in the formulation and implementation of personnel policies affecting the conditions of their employment serves the interest of their own well-being and contributes to the efficient administration of the Service's business.

Public interest is paramount in conduct of Service business

At the same time the Service shall take account of the fact that in its conduct of the Service's business, in its relationships with its employees and in its relationship with unions, the public interest is paramount.

Service requires high standards of employee performance

In furtherance of the public interest, it is the continuing responsibility of the Service to require high standards of employee performance and the continued development and implementation of modern and progressive work practices to facilitate improved employee performance and efficiency.

Principles to be observed in management relations with unions

More specifically, the Service will:

(1) reserve to Service management the right to manage, including the right to administer those provisions of any negotiated agreement(s) with which it is charged;

(2) accept the principle of bilateral – Service management and the union – formulation of personnel policy and practice and working conditions;

(3) preserve the distinction between negotiable and non-negotiable matters provided in the governing law;

(4) reserve the right to take whatever action is necessary to carry out the mission of the Service in an emergency;

(5) recognize employees' freedom of choice to join or not join unions and to select which union, if any, they wish to represent them;

(6) maintain strict neutrality in matters of union membership and unit elections of union representation;

(7) refrain from dominating or interfering with the formulation of or internal administration of any union;

(8) prohibit Service managers from engaging in any activities with unions that would involve a real or potential conflict of interest with their duties and responsibilities as managers;

Principles to be observed in management relations with unions (continued)

(9) extend full recognition to any certified union in its capacity as representative of all employees in the respective bargaining unit(s)

(10) negotiate and consult in good faith with certified unions on negotiable matters;

(11) recognize the right of the union to assure that management administers the agreement in accord with the intent of both parties;

(12) appreciate that differences may arise between management and unions even when both parties are acting in good faith;

(13) seek amicable resolution of differences between management and unions;

(14) recognize and utilize the services of third parties in accord with the intent of the state law governing labor-management relations,

(15) be aware of the interest of certified unions in non-negotiable matters directly and significantly affecting the employees in the bargaining unit(s) they represent by:

  (a) exchanging information on such matters with the unions, when practical, and

  (b) considering union views on such matters;

(16) view unions as self-sustaining organizations;

(17) recognize the right of unions to reasonable access to employees in the bargaining unit(s) they represent;

(18) guarantee union representatives against coercion, intimidation, harrassment, or other retaliation as the consequence of union activities;

(19) maintain constructive, productive and cordial relations with authorized union representatives;

(20) provide the training deemed necessary for all management officials who have any responsibility in connection with the Service's relationship with unions; and

(21) evaluate periodically the quality of the Service's relationship with unions in relation to the Service's approved management philosophy.

Service to seek cooperation of unions

Finally, the Service will, in keeping with the concept of bilateralism, observe the principle that the public interest is paramount, actively and conscientiously seek the cooperation of unions in minimizing the adversary aspects of the mutual relationship and maximizing the productive benefits to employees, the unions, and the Service.

Questions on Readings

The Emergence of Public-Sector Collective Bargaining

1. At what stage is your municipality with regard to labor relations?

2. Consider the general events cited in the reading. What influence have they had on labor relations in local municipalities such as your own?

A Management Labor Relations Policy

1. What is meant by a labor-relations "policy"?

2. How do general, philosophical statements of the type contained in this document become translated, in a particular dispute, into guidelines for action?

Handout for Class 2

SOME OBSERVATIONS REGARDING THE ORGANIZATION OF THE PERSONNEL AND INDUSTRIAL-RELATIONS FUNCTION

1. The responsibility for performance should be wedded to the authority to make decisions.

2. Responsibility and authority should be at a level close enough to the immediate problem to understand it, the policies, and the consequences of the decisions.

3. Responsibility and authority in Industrial Relations and Personnel should roughly parallel those in the organization generally.

4. Information should be optimized at the point in time and organization where the decision is made.

5. The actual location of responsibility and authority in an organization is influenced by:

    ORGANIZATIONAL SIZE

    LEGAL STRUCTURES AND OBLIGATIONS

    TECHNOLOGICAL FACTORS

    ORGANIZATIONAL GOALS AND IDEOLOGIES

    THE STRUCTURE OF OUTSIDE ORGANIZATIONS

    NATURE OF AND TRAINING OF INDIVIDUALS

INSTRUCTOR'S
MANUAL

THE METHODOLOGY OF COLLECTING AND EVALUATING DATA

Prepared by
Robert C. Schlegel

Module Number Two
of
LABOR RELATIONS FOR
MANAGERS OF SMALL AND
MEDIUM-SIZED CITIES
Package VIII

Developed by

SCHOOL OF MANAGEMENT
CASE WESTERN RESERVE UNIVERSITY

THEODORE M. ALFRED, PRINCIPAL INVESTIGATOR

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MODULE II

THE METHODOLOGY OF COLLECTING AND EVALUATING DATA

This module is designed to create an appreciation and awareness of the importance of developing a strategy of data collection, evaluation, and the practical use of such information in labor relations, especially collective bargaining. A secondary purpose of the module is to evaluate the various strategies now employed by municipalities, and to discuss the reasons certain types of data and information delivery systems are successful. The notions of preparation and collection of data are fundamental to effective negotiations. Hence, their introduction early in the curriculum is intended to instill the concept of constant information monitoring and appraisal as a prerequisite to action.

Organizationally, the module consists of three 1-1/2 hour sessions, each made up of a combination of lectures, audit items, discussions, reading materials, demonstrations and applications. The substantive areas of the module are: (1) "Information: Its Role in Negotiations", (2) "Strategy and Assessment of Information Needs in a Competitive Labor Market", including a discussion of alternative strategies for generating data, and (3) "Making Information Available", including how to start, use and maintain an area-wide data bank, and a discussion of the relationship between independent and government data-collection sources. The three sessions relate to one another by providing a theoretical basis, an analysis of planning and strategy steps, and finally some suggestions for delivery systems.

RESOURCES REQUIRED

This module requires several special resources to insure effectiveness. In class 3, keysort cards are recommended as a way of demonstrating a simple, manual data-processing tool. Allowing for errors, each student should have at least two cards for the exercise. A hand-held hole punch, sometimes called a "notcher", should be available for physical coding of the responses. Finally, a keysort needle (a long knitting needle will do if it can fit through the holes) is necessary for the actual selection process.

It is also recommended that some type of automated system be demonstrated at the conclusion of class 3. In a timesharing system a terminal connected via phone lines to a main computer is required. In a more traditional, batch mode environment, punched cards feeding into an input device and the resulting output device (usually a printer) are required. Demonstration of one or both types of systems requires some expertise in their use.

Module II - Class 1

INFORMATION: ITS ROLE IN NEGOTIATIONS

I. Objectives

- to acquaint participants with the need for differing types of information in labor-management relations.
- to examine the different information needs of various municipalities.

II. Instructor's Note

A. Methodology and Materials. Class 1 consists of 45 minutes of lecture and 45 minutes devoted to a discussion of information gathering. Before beginning the session, the instructor should insure some prior preparation has been made by each participant in gathering certain types of factual information. (See audit item A and two additional handouts: "Sample Job Descriptions" and "Sample Vacation Provisions"). Normally these exercises or "homework" should be distributed at a class preceeding the session in which they will be used. Mailing audit item A and the handouts to participants several days beforehand with a short note of explanation should provide enough time for preparation. There is no "homework" given at the conclusion of this class in preparation for class two.

B. Hints for Presentations. The lecture material is an overview of the importance of information, what it is, and why a strategy of preparing and gathering materials is necessary. For reference, most textbooks in industrial relations devote some attention to the role of background information and preparation for negotiations. See, for example, Chapter 3 in Collective Bargaining, 2nd Edition, by Neil W. Chamberlain and James W. Kuhn, New York, McGraw-Hill, 1965, or Chapter 7 in Collective Bargaining: Principles and Practice, 2nd Edition, by Max Wortmann and C. Wilson Randle, Boston, Houghton-Mifflin Co., 1966, or Chapter 5 in Labor Relations, 3rd Edition, by Arthur Sloane and Fred Witney, New Jersey, Prentice-Hall, 1977.

The class discussion should focus on the difficulty of obtaining the information requested, and evaluating the reasons why such information might be valuable. There is, of course, a cost to gathering any information (this area is addressed specifically in Class 2).

Illustrate several responses to questions 1 and 2 on the board. Note differences in wage rates and provisions by population size of municipality or geographical proximity. The job descriptions are standards used by the U.S. Department of Labor in the Municipal Government Wage Surveys.

With regard to question #4, compare and contrast the various subject areas of the contracts or ordinances handed in. Do any include an escalator clause (question #3, audit item A)? If so, what index is used and when does it start? How often is it adjusted and are there limits on the escalation? Finally, if a single union or employee organization holds contracts with several different municipalities, what similarities exist in contract structure?

C. A Prior Classroom Experience. The entire module was presented to 22 participants, each representing a variety of experiences. Including time for comments by the class, 45 minutes were adequate for the first lecture material.

The remaining 45 minutes focused on the audit items requested. Quick summaries of the quantifiable data were made by a course assistant during the initial 45-minute lecture, and distributed immediately prior to the discussion phase. Roughly one-half of the participants had some negotiating experience and supplied one or more contracts or ordinances. Several of the job descriptions did not match the real jobs being performed, so the differences between the written description in the questionnaire and the actual duties performed were briefly explored (this will be useful later on when discussing the need for comparable job information for neighboring municipalities). Only one of the established contracts had any escalator clause provision.

A high level of interest was apparent when discussing the vacation provisions for the uniformed services, mainly police and firefighters. Questions centered around how provisions were administered and the historical background of such provisions.

Finally, it became apparent that wide differences in the difficulty of obtaining such information existed. Some participants found the assignment easy and had all (or most) of the data readily available and summarized. Others found the assignment extremely hard and were forced to dredge the data out of various departmental records. Discussion of such difficulties proved fruitful because it illustrated the value of an information depository, or data bank, and of an information delivery system. These elements are explored in greater depth in later sessions; however, their introduction during the first session will help to "position" the concept with the participants.

III. Lecture Material

A. Lecture Content Outline. Class 1 Information: Its Role in Negotiations.

1. The Role of Information in Labor-Management Relations and Collective Bargaining.

   a. Utility of Information.

   b. The value of an Information Strategy.

   c. The Significance of Preparations.

B. Lecture. Class 1 Information: Its Role in Negotiations.

1. The Role of Information in Labor-Management Relations and Collective Bargaining.

a. Utility of Information. The goal of municipal management is to provide service to insure the health, safety and welfare of its constituency. Secondarily, management should insure a stable, quality working relationship between the city management and employees. Information, as the key input to decision-making, is critical to the management of the work-force whether in a union or non-union setting.

Collective bargaining is only the most visible aspect of a formal relationship. A "contract agreement" or mutually acceptable ordinance is really only an agreement on the best way to manage the workforce. In a unionized setting, collective bargaining should be viewed as an on-going process, continuous, integrated and permanent. Other critical needs for information appear during public-sector contract administration, such as grievance arbitration and budget setting and resource-allocation activities.

Consequently, an action-oriented philosophy of information collection and use will increase the quality of labor-management relations by decreasing the risk of poor quality decisions. Information bickering in negotiations generally takes the form of arguments over the lack of data, or arguments over whose data are more valid. Few factors can injure the integrity or bargaining position of a party as much as erroneous data applied to a key strategic bargaining point.

Active management of information involves two processes: collection and maintenance of accurate information and an effective method of distribution to those who need it for policy or administrative decision-making.

b. The Value of an Information Strategy. We live in a time of information overload; municipal decision-makers must pare the collection job down to only the most relevant and productive areas. Each municipality must develop and maintain a vigorous labor-management relations philosophy and select key strategies to implement the goals and objectives of that philosoply.

The public and private sectors have two common constraints demanding quality labor-management relations: the needs, moods and demands of the employer and the needs, moods, and demands of the employees. The public sector, however, and in particular municipal management, has three other constraints commonly not found in private-sector relations: the needs, moods, and demands of the community constituency; the needs, moods, and demands of the local, state, and national political establishments; the limits, restrictions and requirements of statutes, ordinances, civil service, and municipal charters.

The public sector must communicate the rationale for decisions to the community and provide justification for the allocation of public resources by using facts, figures, and commonly understood information elements.

c. The Significance of Preparations. In a non-union setting, data gathering and preparation are simply good personnel management policies. Decisions about workforce wages, hours and conditions of employment still must be made, unilaterally, by municipal management. For example, do employees feel that they are being undercompensated? What procedures for settling grievances exist? Have they been used? Where are personnel practices being challenged?

Since collective bargaining is a process of bilateral decision making, careful advance planning and continuous preparation within realistic cost guidelines should be a focus of both parties. More constructive thinking and evaluation can be done during the preparation period, apart from the stress of negotiations. Weak positions can be analyzed and perhaps corrected before formal bargaining begins. Better preparations can speed negotiations by allowing parties to anticipate demands and to offer counter-proposals. Confusion and discord are lessened when data are available, sources are known, and parties can agree on common facts. Risk of a poor decision due to inadequate information is lessened. Preparation breeds confidence and decreases the chance of being taken by surprise. Preparation is itself an educational and administrative tool to increase the quality workforce management. With poor preparation, details evaluated during the course of negotiations are often inadequately documented and become hazy with the passage of time.

IV. Materials to be Distributed

Please refer to pages VIII.2.8, VIII.2.9 and VIII.2.10.

Audit Item A

Program in Municipal
Employee Relations &
Collective Bargaining

Assignment: Complete this exercise in data gathering. Bring this completed form with you on October 13.

1. List current beginning monthly wage rates for entry-level positions in the following job classifications (see descriptions on page 2):

   Typist (A) ____________
   Typist (B) ____________
   Carpenter (Maint.) ____________
   Electrician (Maint.) ____________
   Police Officer ____________
   Firefighter ____________
   Refuse Truck Driver ____________
   Refuse Collector ____________

2. Describe vacation provisions for the uniformed services (see sample on page 3).

Provisions	Applications, Exceptions

3. Do you have an escalator clause (automatic cost of living wage increase or decrease) in any of your present contracts? If so, please describe.

4. Please attach a copy of the last contract (ordinance) for all units negotiated with.

SAMPLE JOB DESCRIPTION

Typist

Uses a typewriter to make copies of various material or to make out bills after calculations have been made by another person. May include typing of stencils, mats, or similar materials for use in duplicating processes. May do clerical work involving little special training, such as keeping simple records, filing records and reports, or sorting and distributing incoming mail.

Class A

Performs one or more of the following: Typing material in final form when it involves combining material from several sources or responsibility for correct spelling, syllabication, punctuation, etc., of technical or unusual words or foreign language material; and planning layout and typing of complicated statistical tables to maintain uniformity and balance in spacing. May type routine form letters varying details to suit circumstances.

Class B

Performs one or more of the following: Copy typing from rough or clear drafts; routine typing of forms, insurance policies, etc.; and setting up simple standard tabulations, or copying more complex tables already set up and spaced properly.

Carpenter, Maintenance

Performs the carpentry duties necessary to construct and maintain in good repair building woodwork and equipment such as bins, cribs, counters, benches, partitions, doors, floors, stairs, casings, and trim made of wood. Work involves most of the following: Planning and laying out of work from blueprints, drawings, models, or verbal instructions; using a variety of carpenter's handtools, portable power tools, and standard measuring instruments; making standard shop computations relating to dimensions of work; selecting materials necessary for the work. In general, the work of the maintenance carpenter requires rounded training and experience usually acquired through a formal apprenticeship or equivalent training and experience.

Electrician, Maintenance

Performs a variety of electrical trade functions such as the installation, maintenance, or repair of equipment for the generation, distribution, or utilization of electric energy. Work involves most of the following: Installing or repairing any of a variety of electrical equipment such as generators, transformers, switchboards, controllers, circuit breakers, motors, heating units, conduit systems, or other transmission equipment; working from blueprints, drawings, layout, or other specifications; locating and diagnosing trouble in the electrical system or equipment; working standard computations relating to load requirements of wiring or electrical equipment; using a variety of electrician's handtools and measuring and testing instruments. In general, the work of the maintenance electrician requires rounded training and experience usually acquired through a formal apprenticeship or equivalent training and experience.

Police Officer

A member of the police force, usually in uniform, in a nonsupervisory position and with no promotional rank. Carries out general and specific assignments from superior officers in accordance with established rules and procedures. Maintains order, enforces laws and ordinances, and protects life and property in an assigned patrol district or beat by performing a combination of such duties as: Patrolling a specific area on foot or in a vehicle; directing traffic; issuing traffic summonses; investigating accidents; apprehending, arresting, and processing prisoners; acting as a witness in court. Excludes police patrolmen in specialty categories if additional compensation is paid (e.g., criminal investigation, ambulance drivers, specialized staff or technical positions).

Firefighter

A full-time paid member of the fire department in a nonsupervisory position and with no promotional rank. Duties consist of combatting, extinguishing, and preventing fires, and performing maintenance on own equipment and quarters. Excludes firemen in specialty categories if additional compensation is paid (e.g., vehicle drivers and aides of departmental officers, firefighting or rescue apparatus operators and drivers, communications specialists, etc.).

Refuse Truckdriver

Drives a truck on a designated route for the collection of garbage, trash, or refuse. May act as work leader of refuse collectors assigned to his truck.

Refuse Collector

Picks up garbage, trash, or refuse from homes and businesses and deposits it in truck.

SAMPLE VACATION PROVISIONS

Paid vacations

Provisions

Applications, exceptions and related matters

White-collar and trades and labor employees, firemen, and policemen

An employee who has completed 1 year of continuous employment by December 31 of the previous year is eligible for 2 weeks (10 work days) vacation.

An employee who has completed 8 years of continuous employment by December 31 of the previous year is eligible for 3 weeks (15 work days) vacation.

An employee who has completed 12 years of continuous employment by December 31 of the previous year is eligible for 4 weeks (20 work days) vacation.

An employee who has completed 22 years of continuous employment by December 31 of the previous year is eligible for 5 weeks (25 work days) vacation.

The above schedule is summarized in the following table:

Years of service	Work days of vacation
1-7	10
8-11	15
12-21	20
22 and over	25

An employee who has completed one full year of service and is eligible for vacation, who leaves the employ of the City by retirement or permanent disability, voluntarily resigns, or is layed off, receives as terminal vacation any earned unused vacation credit earned prior to December 31 of the preceding year. The separation date is fixed to coincide with the end of the vacation period.

When a paid holiday falls within a vacation with pay, the employee receives an additional day of vacation with pay.

An employee who has completed less than 1 year of continuous employment by December 31 of the previous year receives one day off for each month worked prior to December 31 of the previous year, but not to exceed 2 weeks.

Vacation leave being earned currently in any calendar year may not be used until after December 31 of that year.

Vacation leave is not cumulative and must be taken during the calendar year after the calendar year in which it was earned. If, however, the City requests an employee to forego vacation for City's convenience, such vacation leave may be carried over to following year.

The beneficiary of a deceased employee receives payment for any unused earned vacation leave.

No vacation credit is granted for the current calendar year to an employee leaving City employment except to persons retiring on pension, or retiring at the compulsory age of 70, in which case they are entitled to pro-rata earned vacation credit for the current year.

Crafts ordinance employees are not eligible for paid vacation leave.

Module II - Class 2

STRATEGY AND ASSESSMENT OF INFORMATION NEEDS IN A COMPETITIVE LABOR MARKET

I. Objectives

- to enable the participant to define the information needed in his or her municipality.

- to acquaint the participants with the importance of defining competitive labor-market areas.

- to establish the value of a systematic data-gathering methodology in the participant's municipality.

- to allow participants to define and select a strategy of data collection based on the unique municipal need.

II. Instructor's Note

A. Methodology and Materials. Class 2 consists of about 60 minutes of lecture and 30 minutes devoted to an application exercise. There is no preparation necessary for the student prior to this class.

B. Hints for Preparation. With regard to the lecture material, a great deal of theory is suggested for inclusion. Personal experience relating to various negotiation strategies known by the instructor will add depth to much of the conceptual material. Examples of "hard" and "soft" information pertaining to the local experience will further be of benefit. While this individual knowledge is not critical to presenting this class material, it is highly desirable.

Class exercise focuses on which elements of information are most critical, and which are least critical. The purpose of this activity is to have participants recognize the different values of various types of information.

Excess data (a "disutility") serve only to cloud issues; represents a net cost to the party that devoted resources to gather and maintain. Participants should simply react to the items listed rather than dwell on potential use or nonuse (the participants will undoubtedly do this later, at their leisure).

After the administration of the exercise (approximately 10 minutes), take a hand vote on the utility of each item. Once the list (or section of the list, if you wish) figures have been taken, pick out the most critical elements (utility or disutility) and discuss reactions. Usually anecdotes from the participants will provide sufficient illustrations.

The instructor may encounter questions on how to cost out various economic benefits as well as the computation of a variety of economic standards of measurement. The mathematics of such computation is not within the boundaries of this module. However, the Labor-Management Services Administration of the U.S. Department of Labor is in the process of preparing an entire seminar on "The Use of Economic Data in Collective Bargaining" which includes chapters on productivity measurement, consumer price index calculations, and the development of comparative economic data. (Reference: John L. Bonner, Chief of the Division of Public Employee Labor Relations, U.S. Department of Labor). In addition, reference to future financial planning (see lecture material II [A]) may uncover questions about costing out alternative courses of action. Most of these calculations are extremely complex and best left to an actuary. One book, however, although written primarily for the private sector may be of assistance. See How to Cost Your Labor Contract, by Michael H. Granof, Bureau of National Affairs, Washington, D.C., 1973.

C. A Prior Classroom Experience. As suggested above, the past experience of many of the participants proved beneficial in focusing critical thinking upon the Wants--Haves--Needs typology. Nearly all--even managers in unorganized municipalities--agreed fundamental wage and fringe data were necessary; however, most of the other items engendered a spirited debate.

The theory in the lecture was supported by local examples of current employee demands (dental benefits, extra paid holidays, etc.) and bargaining issues.

Of the items listed in the exercise, the following were found to be rated either "Valuable" or "Not Valuable" by 75% or more of the participants:

"VALUABLE"	
Wage Data	1,2,3,6,7,12
Hours Data	(none)
Employee Data	(none)
Productivity Data	2,4,5
Fringe Data	1,2,3,4,7,8,9(all)
Documents	2 through 13
Municipal Data	1,2,4,5

"NOT VALUABLE"	
Wage Data	(none)
Hours Data	8
Employee Data	4
Productivity Data	(none)
Fringe Data	(none)
Documents	(none)
Municipal Data	(none)

III. Lecture Material

A. Lecture Content Outline. Class 2 Strategy and Assessment of Informational Needs in a Competitive Labor Market.

1. Assessing Local Information Needs.
    a. Focus on Information.
    b. The Formula: WANTS-HAVES=NEEDS.
    c. Further Defining Your WANTS.
    d. Further Defining Your HAVES.
    e. Further Defining Your NEEDS.
2. Selecting and Implementing an Information Strategy.
    a. Planning a Strategy.
    b. Collecting from External Sources.

B. Lecture. Class 2 Strategy and Assessment of Information Needs in a Competitive Labor Market.

1. Assessing Local Informational Needs.

a. Focus on "data" is qualitatively different than on "information". Data are symbols or notations representing a fact, usually a group of statistics. Information is data that means something, or has value to the decision-maker. Useless facts and statistics provide nothing to better the quality of labor-management relations. Irrelevant data cloud and obscure issues, wasting valuable time and effort.

b. The Formula: WANTS-HAVES=NEEDS. Needs for information are based on a variety of fluctuating demands, such as general labor-management policies, a bargaining strategy, potential union demands, or an evaluation of counterproposals. Information needs in general are those items which must be gathered to clarify environmental constraints. The formula: WANTS-HAVES=NEEDS.

The "wants" of information concern areas of potential services as well as presently provided services. The employment-relations policies set forth by each municipality help to define what data are desired. (See linkage to Module II in Module I, Class 2.) For example, what services does your municipality provide that requires manpower? Will the scope of these services be increased or decreased in the future? What services will the municipality provide in the future that are not provided now? Who currently performs those services?

c. Further Defining Your Wants. Information "wants" can be differentiated on the basis of their ultimate use. Wage bargaining, for example, may require detailed internal wage information as well as comparison with like jobs from surrounding municipalities. This type of information should be highly accurate and, of course, current. Such "hard" information may include such things as:

- Wage histories
- Past municipal revenues
- Profiles of the workforce
- Present contract provisions
- Nature and disposition of recent grievances

On the other hand, bargaining for future pension benefits requires information about future municipal workforce projections, revenues, levels of services retirement rates, life expectancy tables, and other external factors that may affect either or both parties under a long-term obligation. This less specific information may come mainly from external sources, and, as with any forecast, includes an element of uncertainty about its ultimate accuracy. This type of information will be used infrequently, and the currency of the data is not nearly as critical as specific data for wage negotiations, for example. Such "soft" information may include items like:

- Desired or anticipated community services
- Future revenue projections
- Federal or state government action or aid
- Economic climate (tax base)
- Raw material supplies

Determination of information wants require significant analysis of the municipal process and a thorough understanding of the goals and policies of the system. Some key points for evaluating information wants might be:

- Relevancy to the municipal bargaining position
- Anticipation of union demands
- Information feedback of personnel-related concerns from front-line supervisors
- Analysis of grievances and arbitrations
- Comparative analysis of wages, fringe benefits, hours and working conditions of neighboring communities and of municipalities with similar characteristics (size, scope of services, revenues, etc.)

Furthermore, there is a monetary cost to gathering information, usually in terms of an employee's time. The benefits (i.e., the usefulness) should outweigh the costs in the case of every information element in order for that element to be considered a want. As an example, a list of data items of potential importance to negotiations are included in exercise "A". Not every item should be sought and gathered by every municipality. Whenever the cost-benefit ratio (the quantified costs of gathering divided by the quantified benefits obtained from the use) exceeds one for a given item, the resources expended were wasted.

d. Further Defining Your Haves. Defining your information "haves" required detailed analysis. Examine the present municipal sources for collection of past instances, statistics, and statement (or agreement) of goals and objectives. Seek documentation from past periods of negotiations and grievance hearings. Obtain copies of relevant municipal ordinances, charters, and referendums. Collect relevant correspondence from both employee organizations and the municipality. Internal memoranda and documentation should be sought and analyzed for relevance; however, some are likely to be sensitive. For political reasons, care should be taken with regards to their dissemination.

e. Precisely Defining Your Needs. The difference between haves and wants, is needs. Broadly, the information to be gathered and its costs should be identified, and a strategy (or method or gathering) selected to obtain the needs. Information needs can accrue from two sources, internal and external. Each source should have a particular strategy depending upon the availability of the information.

2. Selecting and Implementing an Information Strategy.

a. Planning a Strategy. Once needs have been determined, plans to develop internal information that does not now exist should be made. Although specific definition of internal needs are largely unique to the individual municipality and its situation, some general investigative areas can be suggested. For example, realistic financial planning might require consideration of:

- Future federal, state, and regional subsidies
- Changes in tax structure; likely own source of income
- Rising costs in areas other than workforce
- Cost of fringe benefits, overtime, sick days, holidays, and
- Projections of who will be going on pensions

In the anticipation of union proposals, examine contract workability, especially in light of union demands presented at previous negotiations. Issues grieved and economic trends should be evaluated. Review existing negotiated agreements of this union and other unions with other municipalities. Develop a feeling for local collective bargaining trends.

b. Collecting from External Sources. External information sources provide data of corollary importance. In other words, it is by comparison that this type of information will influence decisions at the negotiation table. In choosing a legitimate sector of comparison, contrast your own municipality's wages, hours and conditions of employment with other municipalities. Comparison by geographical contiguity (e.g., labor market analysis) is the most common. Employees are a mobile resource; they can seek employment with neighboring municipalities or private industry if they so desire. Collect information from surrounding communities on, for instance:

- Base pay for key jobs, starting level (basic fireman)
- Fringe benefits (holidays, medical insurance, etc.)
- Contractual clauses (seniority, grievance administration and arbitration, etc.)

Comparison by typological similarities is used when neighboring communities are not a fair comparison because of varying services provided, significant differences in municipal revenue (large tax bases vs. small tax base), or outright size (for instance, a comparison of a city of 1.5 million to a community of 18,000). Choose typological comparisons by matching municipalities of similar:

- Size
- Workforce structure
- Revenue sources
- Potential labor sources (e.g., the supply of potential employees that could fill municipal job slots)
- Services provided
- Cost of living indicators

Regardless of the external standard of comparison chosen, it is crucial that the standard be fair, reasonable, and agreeable to the employees. The standard of comparison should be acceptable over time, barring unusual changes, and be updated at least every year. Rates of change as well as absolute figures are important decision-making criteria.

3. In bargaining, evaluate the total package of wages, fringe benefits, and working conditions of your municipality against the standard rather than using the standard to decide individual demands. A favorite bargaining tactic is to demand compensation (economic or non-economic) equal to the average (e.g., the statistical mean) of selected communities on specific elements where your community appears below average. While this use of information may clarify the starting point for bargaining, the comparison of other forms of compensation may show your municipality to be higher than the norm. For this reason, bargaining the total package vis-a-vis your philosophy of compensation in employee relations (to be above average? to be a pioneer?) will help to define the spectrum of negotiations and clarify which data are most helpful toward reaching an agreement.

IV. Materials to be Distributed

Exercise "A"

1. Please review these 3 pages.

2. Based on your experience, put a check mark (✓) beside those types of data which you feel are valuable for negotiations (e.g., their benefits outweigh the costs of collecting) and a zero beside those elements which would not be valuable for negotiations (e.g., the cost of collecting and maintaining would outweigh their contribution to decision-making in negotiations). LEAVE BLANK ANY INSTANCES WHERE YOU ARE UNCERTAIN.

Exercise (A)

Data items potentially applicable to negotiation (not, of course, all-inclusive)

A. Wage Data

1. Municipal wage structure by occupations and rates
2. External wage structure by occupations and rates--by neighboring geographical area, similar-sized municipalities, and county, region or state
3. Description of plan for employee-rate progression
4. Detailed description of wage-incentive plan, if one exists
5. Detailed description of job-evaluation plan, if one exists
6. Beginning rates for employees according to job classification
7. Plan for employee upgrading, if any
8. Average hourly earnings
9. Average straight-time hourly earnings
10. Average weekly earnings
11. Average straight-time weekly earnings
12. Description of any recent wage increases--e.g., cost of living
13. Average premium pay per hour by job classification and departments

B. Hours Data

1. Number of hours in normal workday
2. Number of hours in average workday
3. Number of hours in normal workweek
4. Number of hours in average workweek
5. Starting and quitting time for each shift, including odd-hour shifts and rotating maintenance shifts
6. Average hours by bargaining unit and department
7. Comparative hours data
    - comparable jobs in industry
    - competitive employers in the community
    - similar municipalities
    - nearby municipalities
8. Number of employees per shift by occupation and seniority
9. Analysis of overtime by classification and department

C. Employee Data

1. Number of employees by seniority, bargaining unit, and status (permanent or temporary)
2. Age distribution of employees
3. Employee services available:
   a. Medical services
   b. Credit union
   c. Recreational facilities
   d. Cafeteria
   e. Safety
   f. Any others (list)

4. History of wage and fringe-benefit increases
5. Numbers of promotions, demotions and transfers by department
6. Turnover data, with reasons
7. Numbers of employees laid off or recalled by date, department, and classification
8. Wages paid for time spent on union activities
9. Employee merit rating plans
10. List of employees with "red circle" rates

D. Productivity Data

1. Production per man-hour (How to define municipal services in "production units"?)
2. Labor costs per unit of production
3. Technological equipment added during contract period to increase service
4. Percentage of labor cost to total cost
5. Analysis of past and future cost trends

E. Fringe Data

1. Description of shift differentials and premium pay
2. Description of overtime payment plan
3. Description of pension plan
4. Description of group-insurance plan
5. Description of employee-compensation plan if separate
6. Description of safety program
7. Description of all policies on such items as vacations, call-in pays, sick leave, severance pay, holiday pay, rest periods, supplemental unemployment benefits, military leave, jury duty, etc.
8. Cost analysis indicating, for example, cents per hour per benefit, average cost for each benefit per employer year, benefit percentages of total labor costs

9. Comparative fringe data with:
    - comparable jobs in industry
    - competitive employers in the community
    - similar municipalities
    - geographically proximate municipalities

F. Documents to be Obtained

1. Employee handbooks
2. Ordinances, proclamations, management statements to employees and public
3. Copy of last contract ordinance
4. Copy of grievance procedure
5. Copy of wage-progression plan
6. Copy of pension plan
7. Copy of group-insurance policy
8. Copy of employee accident-compensation policy if separate, from (7)
9. Copy of incentive plan
10. Copy of job-evaluation plan; access to job descriptions
11. Copies of all other policies and plans related to negotiations
12. Copies of current union agreements with other municipalities and comparable community employers
13. Copies of the municipal personnel practices and procedures
14. Union constitution and bylaws
15. Arbitration decisions and awards

G. Municipal Data

1. Outline of government structure, showing authority and responsibility levels
2. A clear projection of future municipal finances, revenues, and anticipated expenses
3. Results of recent referenda, with detailed proposals, both those accepted and rejected
4. Estimates of future manpower requirements, by classification
5. Cost-of-living data and comparison of increases and earnings

* For a more extensive discussion of data utilized in collective bargaining, see: National Industrial Conference Board, "Preparing for Collective Bargaining" #172 Studies in Personnel Policy, pp. 56-134.

Module II - Class 3

MAKING INFORMATION AVAILABLE

I. Objectives

- to make participants aware of the consequences with start-up, maintenance, and use of a data bank.
- to enable participants to differentiate among data base, data bank, and data processing.
- to acquaint participants with the advantages and disadvantages of manual information processing as compared with automated methods.
- to familiarize participants with the relationship between private and governmental data collection.

II. Instructor's Note

A. Methodology and Materials. Class 3 consists of three substantive activities--lecture, demonstration, and discussion--each approximately 30 minutes in length. No prior preparation is necessary for the students.

The instructor should pay special attention to the requirements of the demonstration, since the operation of both manual and automated information delivery systems can become quite complex. The manual system described herein is one of the simplest systems to convey the objectives of the class. If it is used, be sure to gather enough Keysort cards (two or three per participant), a hand-held hole punch (or "notcher") and a sorting needle prior to the demonstration.

Materials for an automated demonstration are nearly impossible to specify since the programming, computer time, and hardware components available will vary greatly. If an automated demonstration is desired, on-line access via portable terminal to a central site computer has proven effective. Feed data into a file, for instance, and then retrieve it sorted or summarized in a different report format.

B. Hints for Preparations. The lecture material reflects several concepts associated with information systems and services. A text such as Information Systems for Modern Management, 2nd Edition, by Robert Murdick and Joel Ross, New Jersey, Prentice-Hall, 1975, provides additional background on the costs and benefits of delivery systems. Unfortunately, there are few references relating such concepts to collective bargaining and labor relations, especially with unqiue regard to the public sector. See however, The Impact of Computers on Collective Bargaining, (A. Siegle, editor), Cambridge, Massachusetts, M.I.T. Press, 1969, for elaboration of a variety of union and management uses of computerized techniques. A discussion of information systems and local governments is found in two journal articles: "Computers, Local Governments and the Litany to EDP" by James N. Danziger, Public Administration Review, #1, January/February 1977, pp 28-37, and "Local Government, Information Systems, and Technology Transfer: Evaluating Some Common Assertions about Computer Application Transfer, Public Administration Review, #4, July/August 1977, pp 368-382.

It is better to interweave the lecture and demonstration by passing out the cards at the beginning of the lecture. If the Keysort cards can be preprinted, so much the better. Ask participants to fill in certain types of information (see discussion of class experience for an example). Gather the cards and allow an assistant to code punch the cards while the lecture is being given.

The list of private and governmental data-collection agencies is only suggestive as to the sources available to local participants. Often state or municipal organizations accumulate some type of negotiations data and make them available to members. Such "delivery systems" would serve as a meaningful entry point to the lecture-discussion material.

With regard to the demonstration, take the punched Keysort cards and run a few sample retrievals with them. Even though your gathered information may be duplicated elsewhere, this type of delivery system can hardly be matched for simplicity and speed. The Keysort approach, incidentally, is the method many libraries use to keep track of the due dates for loanable materials.

Finally, the example reflects the elements in a bargaining book and should serve as a capstone to this module. Focus first on who has used a bargaining book and what benefits have been realized. Ask if any participants were unprepared to past negotiations. What did they do? Discuss each of the 10 topic areas.

c. A Prior Classroom Experience. Some difficulties were encountered in getting the Keysort cards back and punched correctly. The items asked for were:

- contact point (municipality and manager)
- phone number
- county
- most recent population figure
- whether the municipality had an existing contract with a) Police b) Firefighters, and c) Service Workers

These responses were then punched or "notched" into preassigned holes on the cards; various holes indicated yes and no answers to certain questions. Unfortunately, the first sort by the sorting needle did not pull the desired information because several cards were misnotched.

The automated demonstration illustrated, via an online terminal, the ability to enter, store, and retrieve data under various formats. Various softwave packages, such as financial models capable of projecting budgets and revenues under given cost constraints, were found to be useful for demonstrations.

Finally, it was important to identify the discussion of the bargaining book as the "capstone" of this module. The mere presence of the book connotes in-depth preparation and analysis of strategic points. An example of a local wage comparison with several municipalities was used, with effectiveness.

III. Lecture Material

A. Lecture Content Outline. Class 3 Making Information Available.

1. The Concept of a Delivery System.
2. Data-Bank Formulation.
3. Maintenance and Use of a Data Book.
    a. Placing a Value on Information.
    b. Relating Private and Governmental Collection Agencies.

c. Additional Information Sources.

4. Manual Data Processing.

5. Automatic Data Processing.

6. Organizing Information for Decision-Making: An Example.

B. Lecture. Class 3 Making Information Available.

1. Concept of a Delivery System. Regardless of the amount or quality, the data must remain accessible and quantifiable to the negotiator. Prior preparation and record-keeping systems become historical documentation, but what of the request for data coming directly from a negotiations session? Speed, accuracy and timeliness are factors in any delivery system.

2. Data Bank Formulation. A collection of files or data sources is called a data bank. In the strictest sense, a library, being a depository of numerous volumes, is a data bank becuase each volume is complete; the use of one volume does not require the use of another, although multiple accessing may be necessary before enough information can be generated to reduce the uncertainty of a decision question to a comfortable level. In contrast, a data base is a technical term related to computerized systems and suggests the storage of a set of related files. The relationship of each to the others is predefined and the data base can be viewed as a common pool of stored data accessible through a single program.

3. Maintenance and Use of a Data Bank.

a. Placing a Value on Information. One key to information benefits is currency. In most cases, old information has little value. As a result, maintenance of stored data with timely updates is the critical element concerning the value of a data bank over time. While some municipalities may have computers or manual methods for assimilating and maintaining a wide variety of data, regional or state associations more commonly provide municipal labor-relations data-bank service. The value of any data-bank service should be judged according to criteria of the local situation.

- Is it complete?
- Are relevant data available? Are they accurate?

- Is the system timely, or put another way, is it responsive--can it deliver the data requested fast and in an easily understandable format? Is confidentiality of sensitive items maintained?

b. Relating Private and Governmental Collection Agencies. The relationship between private and governmental data-collection agencies is simply one of end-use. By and large, governmental sources seek statistical controls over data gathering and provide little more than new figures with small critical analyses. Independent, private sources, on the other hand, are many times concerned with interpretation and support for particular viewpoints. A charge of bias in gathering data is always a tactic for parties confronted with data from uncommon sources, regardless of the propriety of the gathering methods. If common sources can be identified and agreed upon, disagreements over methods of collection will be reduced.

c. Additional Information Sources. A variety of information repositories exist beyond municipal governments. While the following is by no means an inclusive list, some of the sources may prove valuable.

1. International City Management Association
    a. The Municipal Yearbook, a hardcover yearly publication
    b. Urban Data Service (UDS), a series of monthly reports
    c. Management Information Service, a series of monthly reports

2. Bureau of National Affairs
    a. Government Employee Relations Reports, a series of weekly news updates and reports, with indexes

3. Public Personnel Association
    a. Public Employee Relations Library, a series of short handbooks on various topics; approximately 60 paperback texts.

4. Prentice-Hall, Inc.
    a. Labor Relation Guide
    b. Personnel Management, a monthly magazine
    c. Public Personnel Administration, a monthly magazine

5. Bureau of Labor Statistics
   - a. Monthly Labor Review, a monthly journal with articles and statistics
   - b. "Area Wage Surveys", bulletins of surveys conducted in metropolitan areas. Published by regional offices
   - c. Employment and Earnings
   - d. Cost of Living Data

6. Labor Publications
   - a. In Public Service, AFL-CIO Public Employment Dept. monthly newsletter
   - b. The American Federationist, AFL-CIO general monthly magazine to members.
   - c. ______________________________ Teamsters
   - d. ______________________________ AFSCME
   - e. ______________________________ Police
   - f. ______________________________ Fire

4. Manual Data Processing. To store and retrieve information does not require a computer. A computer can do nothing a person cannot do with pencil and paper--if given time. Of course, computers offer cost advantages of speed and accuracy when considering huge volumes of data. However, municipal managers have found several manual techniques to be of great benefit in providing limited information services. One such application is illustrated below.

The Problem: Upon request, to select municipalities by either county or population size that have negotiated contracts in police, fire, or municipal-service employee units.

The Method: Keysort cards, in which information is recorded by notching the edges of the card. The key to the information is printed on the card itself. All cards have holes punched around the edges, i.e., as the following examples illustrate.

County Field
☐ Avon
☐ Clark
☐ Huron
☐ Summit
☐ Waterby

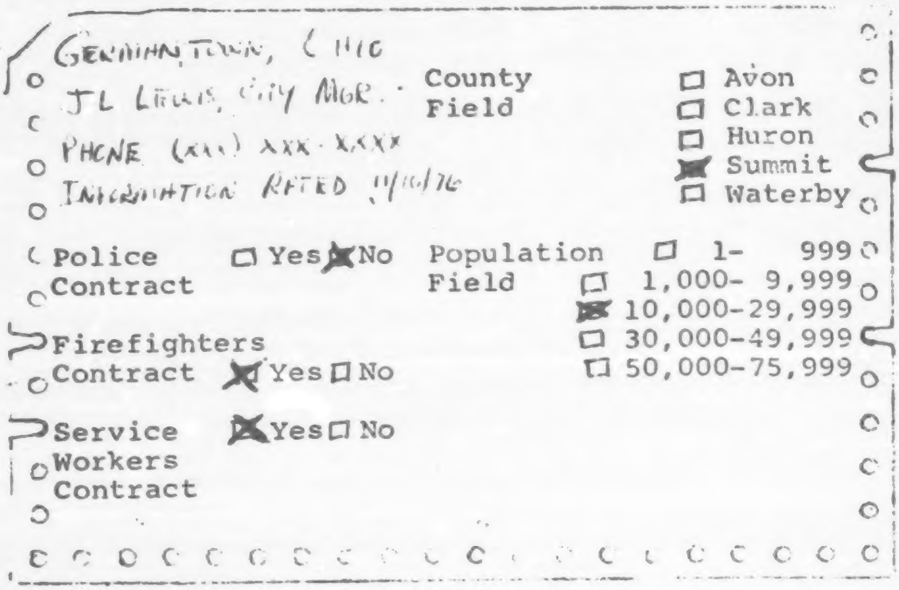
Police Contract ☐ Yes ☐ No

Firefighters Contract ☐ Yes ☐ No

Service Workers Contract ☐ Yes ☐ No

Population Field
☐ 1- 999
☐ 1,000- 9,999
☐ 10,000-29,999
☐ 30,000-49,999
☐ 50,000-75,999

To indicate YES or NO answers, notching with a hand punch is done in predetermined fields (areas of the card), such as:



GERMANTOWN, OHIO
JL LEWIS, CITY MGR.
PHONE (XXX) XXX-XXXX
INFORMATION RATED 11/10/76

County Field
☐ Avon
☐ Clark
☐ Huron
☒ Summit
☐ Waterby

Police Contract ☐ Yes ☒ No

Firefighters Contract ☒ Yes ☐ No

Service Workers Contract ☒ Yes ☐ No

Population Field
☐ 1- 999
☐ 1,000- 9,999
☒ 10,000-29,999
☐ 30,000-49,999
☐ 50,000-75,999

By aligning all the cards together in a deck, a keysort needle (something like a knitting needle) can be passed through the relevant holes and the unnotched cards lifted out. Depending on the coding scheme, the notched cards remaining indicate a positive or negative answer to the question. A second insert of the needle into another hole of the remaining cards will further "sort" the information cards. The result is very basic, manual system to assist the administrative assistant in a regional mayor's association in responding with names and phone numbers of managers in municipalities of similar size and county who have established contracts. Elapsed time to fulfill telephone request: approximately 20 seconds.

5. Automatic Data Processing. Many cities have computers which provide a convenient source for data retrieval. Requests for data can be made in two ways. Batch mode is a request for information that is processed at a later time and a printed report or some other medium is generated and returned to the user. Real-time mode is an interactive process where the requestor inputs instructions (requests for data) to the computer via a terminal device and responses are made immediately. The advantage of automatic methods is the variety, accuracy, and speed with which accumulated data can be represented.

6. Organizing the Information for Decision-Making: an example. Information must be accumulated, stored, and updated in order to be of value. Yet an often forgotten dimension of information services is the dissemination of the information for use. A compendium of data is sometimes placed in a bargaining book. Overall, the book includes the information necessary to negotiate and administer a collective bargaining agreement and an overall labor-relations program. The example identifies some items that might be included in the bargaining book. Admittedly, the elements included in any book will vary according to the needs of the municipality.

IV. Materials to be Distributed

As an example, the following items were found in a bargaining book prepared in 1974 by the Personnel Director of a city of approximately 35,000. The city negotiates with several unions. The book is divided into ten different sections, each including pertinent communication, letters, and statistics.

Section 1. Wage Comparison Request

The comparison of wages is made with the six bargaining units represented by unions.

1. Wages, increase
2. Cost of living
3. Holidays
4. Longevity
5. Hospitalization
6. Sick leave
7. Tool and clothing allowance
8. Miscellaneous (for example: life insurance, unemployment compensation, vacation changes, suspensions and notifications, retirement pay)

Section 2. Laborers' Union

In the correspondence from the union to the city and from the city to the union, there is a summary of the present wage and fringe-benefit costs, pay ranges, hospitalization, life insurance, longevity, holidays, a vacation schedule with a summary for each worker from the date of hire, and the total vacation cost.

There also is a document summarizing local union demands at a meeting of December 1973. The union, for example, requested additional Blue Cross benefits, unlimited accumulation of sick time at time of retirement (1/3 to be paid in cash), promotion from the ranks by seniority, cost-of-living allowance, vacation to be computed on anniversary of employee's hiring date (1 week after 1 year, 2 weeks after 2 years, 3 weeks after 5 years, etc.), unemployment compensation for all employees.

Section 3. Mechanics' Union

Correspondence is included from the union to the city, and from the Personnel Director to the union concerning the local demands discussed in December 1973. A few brief notes summarizing current practice follow each item. For instance:

- Union requests tool allowance of $1000.00 per man per year.
- Union requests a dental plan to be included in the hospitalization coverage.
- Union requests unlimited sick leave accumulation.
- Union requests wage increase of 10%.

There is, in addition, a computation of the present wage and fringe-benefit cost, including pay ranges, hospitalization, life insurance, longevity, holidays and the vacation schedule which, as in the previous section, includes each individual employee from the date of hire.

Section 4. Truck Drivers' Union

Correspondence from the union to the city and a summary of the present wage and fringe benefit costs similar to those in section 2 & 3. The union correspondence dated December 1973 includes, for example, the following proposals:

- Unlimited sick leave
- Eyeglasses
- Dental care
- 1/3 of accumulated sick leave to be paid upon retirement or termination in cash
- A one-year contract in writing signed by the mayor
- A 20% wage increase, not to include cost of living
- Cost of living check paid every 3 months, separately
- Driver to be paid 50¢/hr. more for heavy equipment
- Driver working in higher paid positions shall receive the higher pay
- Driver shall be paid 50¢/hr. more for lead man
- All drivers shall be consulted on any truck-driving positions that become available, regardless of what section it is in
- Holidays: Add Presidents' Day, Election Day, Personal Day
- The union or steward shall be notified of any suspension, discharge, or lay-off before it can be made

Section 5. Transit Association

There is correspondence from the Transit Employees' Association to the city on the subject of wages, fringes, and working conditions. An analysis of present wage and fringe-benefit costs as discussed in the previous section is also included.

Section 6. Police Employees

Correspondence from the Patrolman's Wage Committee Chairman to the Chief of Police and a summary of the police request for the calendar year 1974 is included. In addition to a summary of the present wage and fringe-benefit cost, there is a 1974 police wage comparison request with 13 other municipalities in close geographical proximity to this city.
The breadth of data gathered spans from straight-time wages for the Chief of Police and patrolmen to uniform allowances, vacation, longevity, overtime, hospitalization, life insurance, holidays, sick days, work week, number of men on the force, and the date of the last wage increase, as well as the expiration date and the percentage increase granted by the particular municipality.

Section 7. Firefighting Employees

In addition to correspondence from the wage committee to the city, letters are included from the mayor to the Office of the State Auditor and the State Auditor's response. This latter correspondence concerned a state statute mandating the number of sick-leave days allowed firefighters and a definition of a workday. In addition, the 1974 requests from the fire department are summarized, as are the present wage and fringe-benefit cost data.

Section 8. Miscellaneous Information

Wage and fringe-benefit cost sheets are included for the building department, recreation centers, service department, clerical, administrative, service department foremen, and other miscellaneous employees. Information regarding the vision-care program of Blue Shield is included, with substantial documentation concerning the Blue Cross and Blue Shield plans that provide health protection. A memo from the Personnel Director to the mayor recommending certain procedures is included as are summary sheets entitled, "What Is a Fringe Benefit?", "List of Fringe Benefits Related to Computing Costs of a Fifteen-Minute Paid Rest Period", and "Formula for Computing Total Cost of a Fringe Item".

Section 9. Current Wage Ordinances
Copies of all present ordinances are enclosed as are proposed ordinances under consideration.

Section 10. Previous Wage Ordinances
This last section includes copies of ordinances dating from 1957 through 1973.

INSTRUCTOR'S

MANUAL

COLLECTIVE BARGAINING AND PUBLIC POLICY

Prepared by
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Module Number Three
of
LABOR RELATIONS FOR
MANAGERS OF SMALL
AND MEDIUM-SIZED CITIES
Package VIII

Developed by

SCHOOL OF MANAGEMENT
CASE WESTERN RESERVE UNIVERSITY

THEODORE M. ALFRED, PRINCIPAL INVESTIGATOR

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COLLECTIVE BARGAINING AND PUBLIC POLICY

The purpose of this module is to provide municipal managers with some understanding of basic forms of conflict distinct from the industrial relations arena. In addition, Class 2 sets the stage for a discussion of the role of the federal and state law in public sector collective bargaining which is carried out in Classes 3 and 4.

Module III - Class 1

CONFLICT: SOME COMMENTS

I. Objectives

- to increase awareness of the various types of conflict.
- to give insight into two views of conflict; the human relationist's view and the pluralist's view.
- to provide the background necessary to be able to place labor-management conflict within a framework of conflict in general.

II. Methodology

Class 1 is geared for 1 1/2 hours. The lecture is fairly short but it does cover the basic aspects of conflict which ought to be understood before discussing bargaining. It is expected that each instructor will bring his own expertise to the classroom, and weave it into the material in this manual.

A suggested reading for this area is: Rubin, Jeffery A. and Brown, Bert R., The Social Psychology of Bargaining and Negotiation, Academic Press, (New York), 1975, Chapters 1 and 2, pp 1-19.

At the end of the lecture, the instructor asks and rephrases the discussion questions.

NOTE: The discussion questions are also in the Student's Manual.

These questions will not take long to answer but will review the two views of conflict and their appropriateness to various kinds of conflict. The instructor ought to obtain a feeling of how well the participants comprehend the lecture material. Moreover, the questions could initiate a longer discussion of some aspect of conflict which could lead into or take the place of the small group discussion involved in Handout 1-1.

Handout 1-1 is simply questions which are designed to get the participants to examine conflict of some sort that exists or has existed in their work situation. It aims to get them to analyze conflict intellectually instead of merely reacting to it on the surface. The instructor may choose to give this handout during class, explain the assignment and break into small groups for the discussions or he may ask each participant for a short written analysis to be handed in the following week.

Small discussion groups might be useful at this stage to further the "getting to know one another" aspect of learning which is one of the important purposes of the entire course.

The homework idea, however, does give a participant more time to think analytically about a particular situation and may be more beneficial to him.

NOTE: Handout 1-1 is not in the Student's Manual and must be reproduced to be handed out.

III. Lecture Material

A. Lecture Content Outline. Class 1 Conflict: Some Comments.

1. Definition of Conflict--incompatible goals.
2. Types of Conflict.
   a. Intrapersonal--internal conflict over personal decisions.
   b. Interpersonal.
      1) Supervisor vs. subordinate.
         Husband vs. wife.
         Parent vs. child.
      2) The resolution of the above.
   c. Small Group.
      1) The team concept and the breakdown of the terms.
      2) Various roles played by members of the group.

d. Organization Conflict.

1) Communities of interest.

black vs. white
Jews vs. Christians
free market vs. institutionalists

2) Methods of reducing conflict.

3) Discussion of organizational conflict.

3. The General Nature of Conflict.

a. Two views: pluralists vs. human relations.

b. Methods of handling conflict.

NOTE: This outline is contained in the Student's Manual.

B. Lecture. Class 1 Conflict: Some Comments.

1. Defining Conflict. A basic conflict is a situation in which two or more parties are pursuing apparently incompatible goals. Conflict is a fact of life and all of us deal with it in one form or another on a continuous basis. One might think about intrapersonal, interpersonal, small group and large group conflict.

2. Types of Conflict.

a. Intrapersonal. Intrapersonal conflictexists when we find ourselves having to choose one alternative from a set of two or more courses of action. These intrapersonal problems may be economic or non-economic and the former might be easier to resolve because one can COST out the alternatives. Conversely, intrapersonal psychological conflict is harder to resolve simply because it is non-quantifiable. In a sense, these sorts of non-economic dilemnas are generally resolved by following one's feelings and then relating information which supports the choice and rejecting data which suggest the choice was wrong. Moreover, the more one is aware of intrapersonal conflict and can plumb its depths, the more easily it can be resolved. However, one must recognize that people laden with intrapersonal internal conflict can become incapacitated. That is, they may not function normally and they tend to distort reality and thus their behavior is governed by a different framework from that of the normal person. Moreover, this ability to know one's self can be used and applied in interpersonal and small group conflict.

b. Interpersonal Conflict. Interpersonal conflict is conflict between two people. Such conflict exists between superior and subordinate, husband and wife, parent and child, neighbors, and even between friends. In certain cases, organizational changes are made to reduce the conflict. A man leaves one job for another where he hopes his relationship will not be characterized by conflict. Husband and wives elect to separate or divorce; children leave home or are asked to leave; neighbors and friends choose not to talk with one another. Thus, this sort of conflict is resolved by changing the relationship which appears to be the cause.

However, one must recognize that these changes are methods directed at reducing the possible chance of overt conflict. Thus, for example, if a child leaves home prematurely one cannot argue that there is no conflict between the parties; rather, there is simply no opportunity for overt conflict. Obviously, divorce and job change are similarly examples of ways to reduce the chance of stimulating conflict.

Other social scientists might argue that one ought to get at the root cuase of the conflict. For example, marriage counselors attempt to find out what it is that A does to annoy B and vice versa. Once this cause is known, it is argued that changes in behavior can be induced into the parties so that they can live together in harmony. While both schools of thought have their adherents, it seems safe to say that most conflict is reduced by organizational or relational change rather than by interpersonal diagnosis and treatment.

c. Small Group Conflict. The next form of conflict occurs in small groups which may be pursuing a common goal. In a sense, this is characterized by the breakdown of the "team". This sort of conflict is harder to resolve because one cannot simply break up the team. The costs, both economic and non-economic, are too high. Thus, one attempts to find a third party or facilitator who works with the group while it pursues its goal. In many cases, the facilitator is already a member of the group and his time and energy may largely be devoted to minimizing conflict between or among other members so that the group's goal or task can be completed.

d. Organizational Conflict. Conflict also exists between large organizations as well as between communities of interest. For example, we have differences between blacks and whites, Jews and Christians, advocates of free enterprise and supporters of state ownership, consumers versus producers, taxpayers and school boards, urban residents and city managers, Republicans and

Democrats, sellers of similar products, and, last but not least, between the managers and the managed. How is this conflict regulated?

The methods of reducing intrapersonal, interpersonal and small group conflict are less relevant in the case of large organizations. Organizations which vie with one another must, if they are to achieve their goals, control the resources necessary to carry out their tasks. These resources may be money, control over the "rules of the game", or the ability to impose COSTS on one's competitor or rival. Once an organization or community of interest acquires control of the necessary resources, it attempts to achieve its goals at the expense of its rival. It may, if it is a community of interest, attempt to influence the course of local, state and federal laws. Thus, for example, we have the Civil Rights Law of 1964, consumer protection legislation, and an occupational health and safety act. Organized labor and big business normally have full-time personnel who attempt to influence legislation favorable to their own ends.

Much of this organizational conflict is healthy and it might be characterized by the word "competition". In a sense, these organizations compete to influence legislation, to develop ideas and to maintain a dynamic and democratic society by challenging the status quo in various arenas.

In that sense, this large organizational conflict is resolved because one competitor wins over another. But this is not necessarily an "I win, you lose" game. For example, civil rights advocates faced organized opposition, yet the final results clearly benefit both sides both socially and economically. In this instance, the resources needed were votes in Congress, yet there is one other resource that tends to be viewed negatively by many. That is power, or the ability to impose costs on one's rival regardless of his will. This is manifested in a strike or lockout. The union, by withholding the services of its members, hopes to reduce sales of company products and so get the employer to accept the union's demands. The other side of the coin is lockout which puts employees out of work and thereby coerces them into yielding to the employer's will. These weapons have been legitimized by the federal government and the strike and lockout are viewed as acceptable ways to resolve labor-management conflict.

In a sense, the downtime due to strikes is the price Americans pay for a system of free collective bargaining in the private sector. Legislation with respect to the conduct of labor-management strife is the result of the two large communities of interest--namely, labor and private sector business.

3. Conflict in General--Some Characteristics. The discussion of conflict can be considered from two different standpoints. These are called the pluralist and human relations veiw. The basic distinction between these camps is over their respective views of conflict. The pluralists accept conflict as an inevitable fact of modern society and argue that it should be regulated. The human relationists reject the inevitability of conflict and want to eliminate it since, in the latter's eye, conflict is unnecessary.

One might expand on the differences between the two views and illustrate them in the following manner:

VIEWS OF CONFLICT

Human Relationists	Pluralists
Conflict is bad and should be eliminated	Conflict is good and should be regulated.
Conflict is unnecessary.	Conflict is inevitable.
Environment is cause of conflict so changes in the environment can reduce conflict.	Environment is not as important a cause of conflict as are genetic and psychological factors.
Conflict is characterized by a breakdown in trust and openness.	Conflict is characterized by a struggle over limited resources (e.g., power, dollars, etc.).

NOTE: This summarization is included in the Student's Manual.

Perhaps the most critical aspect of the differences between the parties are the ways in which conflict is handled. No one can argue with the inevitability that conflict exists. Thus, what is important is to deal with it and contain it, if possible.

The human relations school might attempt to resolve conflict by utilizing techniques to open up communication systems and to increase the level of truce between the parties. These efforts would be intended to highlight manifest and latent obstacles to conflict resolution. One technique might be to have opposing parties write down their perception(s) of the other and then bring the group together to share this information. The groups would then separate and discuss this information in order to better understand its opponent's perceptions. The group might then be brought together to focus on the problems.

Another technique might be for the opposing parties to identify superordinate goals which are resolvable. It is argued that a successful effort in attacking the higher goal will increase the probability of success in solving lower goals. In a sense, this method relies on the idea that a "common crisis" reduces differences and increases cohesion.

The pluralist, on the other hand, would focus on structural changes to resolve conflict, e.g., one way to resolve collective bargaining conflict is to promote public policies which equalize the power across opposing groups. To a large extent, this has been the aim of both federal and state public policies with respect to labor-mamagement relations. It is likely that pluralists would hone in on changes in substantive and structural issues as contrasted to working in the areas of interpersonal behavior or small-group dynamics. Moreover, the aim of pluralists is not to minimize tension, but rather to generate a certain amount of tension between parties as a way to stimulate competitive behavior and the concomitant resolution of problems.

DISCUSSION QUESTIONS FOR CLASS 1

1) How well does HR view fit different conflict situations?

2) What aspects of the HR approach may be useful in the work situation?

3) How important are communications in resolving conflict in the work situation? What are ways to do this?

4) Which view of conflict would you like your wife/husband to have?
Which view would you like your boss to have?
Which view would you like the mayor or your municipality to have? the president of the U.S.? the milkman? the major in the Army? Why?

5) What's wrong with these two views?

HANDOUT 1-1 for CLASS 1

ASSIGNMENT FOR SMALL GROUP DISCUSSION - OR HOMEWORK FOR NEXT TIME

Describe a conflict situation arising in your work situation.

Was it interpersonal conflict of organizational goals?
Was it "bad"conflict or "good" conflict?
Was it unnecessary or inevitable?
Was it triggered by a breakdown of trust or communications?
Was it a struggle over power or resources?

Analyze how the people involved reacted to the conflict. How was the conflict resolved?

Looking back, in what ways do you think the people involved could have reacted differently? Would the resolution have been the same or different?

Module III - Class 2

RESOLUTION OF CONFLICT IN LABOR-MANAGEMENT RELATIONS

I. Objectives

- to examine the historical development of labor-management conflict and collective bargaining.
- to explain the purpose of public policy as balancing the power between labor and management and reducing conflict.
- to point out the differences between public and private sector bargaining.
- to increase awareness of the importance of sensitive and sophisticated practitioners in public sector labor relations.

II. Methodology

Class 2 consists of 1-1/2 hours lecture and 1-1/2 hours devoted to a case study. The instructor may want to fill out the lecture material with up-to-date data on the occupational and industrial distribution of the work force (see Monthly Labor Review). In addition, he might look at Public Workers and Public Unions edited by Sam Zagoria, (American Assembly, Columbia University, 1972) and PERL series materials.

The Atlanta Sanitation Strike case should be included in the Student's Manual and should be read by the participants before coming to class. The instructor should review the facts and details of the case by either summarizing the highlights of the case himself or by asking questions about the general situation.

When it is clear that the facts, terms and details of the case are understood, the case is analyzed by discussing the questions at the end of the case. The case study should illuminate the complexities involved in public sector collective bargaining and the resolution of a conflict. If the instructor is successful in getting good class participation and interest, the points and issues developed during the discusssion are likely to be referred to by the group in later sessions on collective bargaining theory and techniques. It is hoped that the class, with a common knowledge of the facts and by analyzing together a practical case, will be better prepared to look at the theoretical aspects of bargaining.

III. Lecture Material

A. Lecture Content Outline. Class 2 Resolution of Conflict in Labor-Management Relations.

1. Some Comments about American Unions.
    a. Extent or organization.
    b. Reasons for unions.
2. The Emergence of American Unions.
    a. The private sector.
        1) The right to strike.
    b. The public sector.
        1) The strike.
        2) State's response.
3. Public Policy--the Nature of--the Body of rules and regulations.
4. Public vs. Private Sector Bargaining.
    a. Differences.
    b. Public sector approach to collective bargaining.
5. Prospects.

a. The public sector.

b. The private sector.

6. Summary.

NOTE: This outline is included in the Student's Manual.

B. Lecture. Class 2 Resolution of Conflict in Labor-Management Relations.

1. Some Comments about American Unions. Unions comprise about 25 percent of the American work force. This figure includes private and public sectors. The number of persons covered by collective bargaining contracts has remained relatively stable since the early 1960's. The one major exception is the public sector which has grown quite rapidly since the early and middle 1960's.

In a sense, unions exist to satisfy the needs of the managed: 1) economic gains and 2) the ability to have some control over the rules governing one's work life. Thus, a union is a vehicle designed to attain these fundamental needs, and it must therefore oppose some of the goals and methods of the managers. Simply put, unionism means a division of authority between labor and management. The rules of the work plan are now made bilaterally, and the efforts to redistribute power from management to labor inevitably mean this relationship is characterized by conflict. However, it is not just a conflict situation. Management needs labor and vice versa. Thus, there is a symbiotic aspect to the labor-management association. One might characterize the relationship as one of mixed motives, namely, conflict and cooperation.

The emergence of unionism in America can, in part, be portrayed by looking at the evolution of the right to strike in the private sector, the ultimate coercive weapon in the unions' arsenal. At the same time, it should be noted that public sector bargainers are not so eager to accept the right to strike. Public sector unions, in most cases, want the strike weapon, but states and local municipalities are much more fearful of this weapon than are private sector employers.

2. The Emergence of American Unionism.

a. The Right to Strike: Private Sector. The right to strike has been at the center of the labor movement in America almost since the country's beginning. As

Charles O'Gregory says in LABOR AND THE LAW, "Combination and concerted action are the very backbone of the whole union movement." This sentiment is clearly reflected today in the cries for the right to strike by many spokesmen for public sector unions in jurisdictions which prohibit employees from exercising such concerted action.

Although the strike has long been the most potent weapon in the union's arsenal, it was not a statutory right of American workers until the Wagner Act was passed in 1935. Nevertheless, unions used strikes long before 1935. The strike has been part and parcel of labor's arsenal at least since 1806, when Judge Recorder Levy argued that combinations of Philadelphia journeymen cordwainers (shoemakers specifically working in cordovan leather), conspiring to withdraw their services from master cordwainers (their employers), unnaturally interfered with the normal operation of the labor and concomitant product markets. In his decision, Levy relied on the doctrine of criminal conspiracy, which stated that combinations of workingmen aimed at increasing wages were illegal in two ways: their goal of improving their lot required concerted action, a conspiracy, and the end required that an injury be done to another, viz., the employer. Thus, the strike was illegal in terms of both means and ends. However, this English-bred, common-law, criminal-conspiracy doctrine led a relatively short life in America.

Chief Justice Shaw of the state of Massachusetts neatly discouraged its use in Commonwealth v. Hunt in 1842. In this case, several Boston journeymen bootmakers struck an employer utilizing the services of one Jeremiah Horne, a nonunion bootmaker. Convicted by a lower court, the bootmakers appealed, and Shaw, well aware of the need not to stir up trouble in Massachusetts's infant industry, simply argued that union efforts to induce members to join their organization were not in themselves unlawful. After all, he noted, "The purposes of the society might be laudable, such as discouragement of the use of ardent spirits." Thus, this landmark case effectively put an end to the criminal-conspiracy doctrine in America.

Between 1842 and the turn of the century when the injunction was established as a way to prevent strikes, there was a series of conflicting labor cases in Massachusetts and New York. Massachusetts courts generally espoused a conservative doctrine, allowing concerted employer action aimed at another employer even though the outcome of such activity was to drive the aggrieved employer out of business (see Bower v. Matheson, 1867), but forbidding concerted activity by employees aimed at increasing the wages paid by their employer (see Vegalahn v. Gunter, 1896). However, the dissenting opinion by Judge Holmes in this latter case is worth noting. He said that,

> "...one of the eternal conflicts out of which life is made up is that between the effort of every man to get the most he can for his services, and that of society, disguised under the name capital, to get his services for the least possible in turn. Combination, on the one side, is potent and powerful. Combination, on the other, is the necessary and desirable counterpart, if the battle is to be carried on in a fair and equal way."

Thus, Holmes's dissent succinctly foreshadowed the intent of Congress when it passed the Wagner Act in 1935.

The New York judiciary, on the other hand, developed a very liberal attitude toward strike activity--even more liberal than that enunciated in England by Lord Herschell in Allen v. Flood (1897). For example, Chief Justice Parker of New York argued for the right of a union to strike even for a closed shop, that is, a plant in which union membership was a precondition of employment (see National Production Association v. Cumming, 1902).

However liberal New York judges might have seemed, labor's hopes were soon dashed by the use of the labor injunction. This device allowed an employer to seek out a judge, submit to him affidavits, and in return get a court order forbidding the union from carrying out its concerted activity. Any violation could be held to be contempt of court. Many such injunctions were granted without affording the union a chance to tell its side of the story.

It should be made clear that this practice by the American judiciary, between about 1900 and 1932, reflected the judge's values and association with businessmen more than a conscious effort to break up unions. The judges and the businessmen--at that time--believed in a Smithian market economy. Unions, in their view, tended to foul up the workings of this market and so endangered the growth of American business. The judiciary felt they were supporting, not hindering, economic growth.

Obviously, the unions fought the use of the injunction, and the Clayton Act of 1914 was viewed by many as labor's "magna carta." Since Section 20 of the Clayton Act apparently prohibited federal courts from issuing injunctions in any case between employer and employee, the unions thought they could no longer be prosecuted under the Sherman Antitrust Act. However, in Duplex v. Deering (1921), the Supreme Court held that the concerted activity of a union, in this case a secondary labor boycott, was illegal under the Sherman Act. Courts could and did continue to issue ex parte injunctions requested by employers to stop union strike activity.

It was not until the passage of the Norris-LaGuardia Act in 1932--especially Sections 4 and 13--that labor was able to carry out concerted primary strike activity without undue fear of court restraining orders. One year later, in 1933, the National Industrial Recovery Act (NIRA) was passed and Section 7(a) provided for among other things, free collective bargaining.

This statutory attempt by the New Deal to promote economic recovery was declared unconstitutional in May 1935 as a result of the indefatigable efforts of one Mr. Schecter, a small-time poulterer. However, the NIRA and the Norris-LaGuardia Act set the stage for the National Labor Relations Act of 1935 (commonly called the Wagner Act), which gave workers the statutory right to strike. In addition, the Wagner Act created the National Labor Relations Board to enforce the new law, in contrast to the NIRA which had no effective enforcement machinery.

What followed was not all sweetness and light. Many employers fought the Wagner Act on constitutional grounds, but the Supreme Court validated the 1935 legislation in the Jones and Laughlin decision in April 1937. Encouraged by the developing federal legislation, unions grew by one million members--about 33 percent--between 1933 and 1935. Union membership reached nearly 9 million by 1940 and 13 million by the end of World War II. Thus, positive governmental influence played a critical role in union growth in America.

This very rapid growth was not without strike violence in the late 1930's. The United Automobile Workers strikes in Detroit are classic examples of industrial ideological conflict culminating in violence. However, once America entered World War II, strikes were voluntarily eschewed by unions. There were some strikes during the period 1942-45 but nothing like the period just preceding the war, and the major credit must go to the National War Labor Board, which was able to resolve many potential strike situations peacefully.

This resolution, of course, was essentially grievance arbitration, and its development as an alternative to strikes continues to be one of the unique aspects of the American collective bargaining contract. It might also be noted that the National War Labor Board contributed significantly to the development of many of today's leading arbitrators.

The era of wartime industrial peace ended in 1946 with a rash of strikes. Short supplies of consumer goods, coupled with large savings, disillusionment with the administration, and annoyance at wartime controls all contributed to postwar industrial unrest. Although this strife was not the fault of existing law, it was one factor leading to the passage of the Taft-Hartley Act in 1947.

The Taft-Hartley Act substantially altered the position of the federal government with respect to labor, since it articulated a set of unfair labor union practices corresponding to the unfair employer practices enunciated in the Wagner Act. Thus, the pendulum had swung back, and public policy with respect to labor may currently be characterized as one which states rights and responsibilities for both labor and management.

The strike remains a potent weapon, but it has been used sparingly in America. Employers and unions have frequently cooperated to limit the damage done by strikes. The development of arbitration as the usual quid pro quo for a no-strike pledge during the life of the contract is one prime illustration of organized labor and management's effort to ensure industrial peace in the United States. Recently the United Steel workers agreed to a contract which called for a no-strike clause and provided for arbitration of interests.

The search for industrial peace will continue, but at the same time the use of the strike weapon in the postwar years has raised some interesting problems. For example, how does an economic strike differ from an unfair labor practice strike? Generally, economic strikes are over wages, hours, or working conditions, while unfair labor practice strikes are in response to employer practices thought to be illegal, such as failing to bargain in good faith. The distinction is often critical because the rights of workers are affected by the nature of the strike. Unfair labor practice strikers have an unlimited right to their jobs; that is, they can be replaced only temporarily. On the other hand, economic strikers can be permanently replaced, at least theoretically. In practice, this does not occur often since the cost of recruiting and training a new work force is high.

The real problem here is in interpretation of the strike. The reason for the strike may not be clear, and workers at the time of the strike may be faced with uncertainty over subsequent job rights.

In addition to economic strikes and unfair labor practice strikes, we also encounter jurisdictional strikes, when two or more unions are competing for work assignments. These do occur, but they are not easily defended since the employer's right to uninterrupted production is curtailed as a result of actions beyond his control.

Such variations, however, have not altered the basic rights guaranteed in the Wagner Act. The strike as we now know it received its congressional blessing in 1935. Any strike imposes a price on our society, but, on balance, it seems a relatively small price to pay for a system of industrial self-government.

b. Public Sector: The Strike. Most state legislatures have not permitted public employees the right to strike. In general, it is argued that such actions by public workers paralyze government and this is an unacceptable public cost. Many will argue that government is sovereign and that the strike, if allowed, gives too much power to employees who could shut the doors of public organizations.

This attitude toward the strike is not shared by all. Others argue that free collective bargaining ought to include the right to strike and that the costs created by this weapon are less than the gains which come from allowing the strike.

However, as of 1977, public employees generally have not been given the right to strike. Some states, including Montana, Vermont, Hawaii, Pennsylvania, Alaska, Oregon and Minnesota have given employees limited rights to strike. The limitations usually require labor and management to go through an exhaustive set of negotiations before the union is free to strike. Moreover, states which forbid the right to strike also set up impasse procedures aimed at offsetting the union's loss of its most potent weapon.

The arguments for and against public sector bargaining generally and the right to strike specifically, focus not only on the idea of the government as a sovereign employer but also on the idea that governments rely on tax income to operate, and consumers of government services have no alternatives if these services cease because of a strike. In the private sector, a consumer can vote with his dollar and buy elsewhere, but this alternative is not available to the consumer of public services. It is clear that the arguments over public sector bargaining will continue over the next few years.

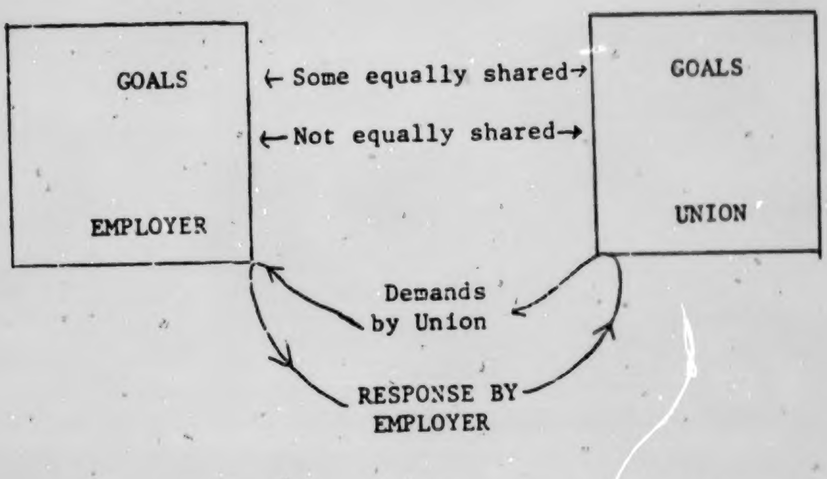
3. Public Policy.

It can be seen that public policy at the state, local and federal level is aimed at balancing power between labor and management. In a sense, this social experiment in the U.S. has worked exceedingly well. To be sure, we have strikes, lost time, and occasional violence, but on the whole one would have to look hard to find another situation in which conflict is resolved as successfully as it is under the American collective bargaining system.

Laws, statutes, court orders, and administrative agency rulings form the body of rules and regulations covering the relationship between the managers and the managed. This body of knowledge also provides the structure or framework for the collective bargaining process from the onset of organizing to the procedures used in processing charges of unfair labor practices by employees or unions.

This legislation and body of rules and regulations came about because of the political efforts of those advocating a more equal division of power between labor and management. They are a way of dealing with conflict. If nothing had been done the pressures would build and the consequences of not recognizing and dealing with labor-union interests would have been disasterous.

Schematically, one might portray the situation as follows:



The Collective Bargaining Process

A Negotiated Contract

4. Public vs. Private Sector Bargaining.

a. Differences. There are differences between the public and private sectors. First, the private sector has as its main goal profits or revenues exceeding COSTS. In order to insure the existence of profits without significant changes in sales, firms have to hold down costs or increase prices. The public sector does not have the goal of profits. Ideally, it exists to serve the taxpayers and it cannot raise taxes to cover increased costs as easily as a firm can raise prices. It is limited in this action by reluctant taxpayers and by the desire to stay in office.

A second difference is that governments cannot elect to pick up and move their operations when costs in their area get out of hand. The private firm is mobile, as is clearly demonstrated by the growth of the Sunbelt over the past decade.

Third, private and public organizations differ in terms of efficiency. Public organizations are by their nature political and decisions are not made on a simple economic basis as they might be in the private sector. In many cases, the political aspects of a decision outweigh the economic, and, thus, the means of decision making are more complicated and inefficient than is true of private corporations. The public manager has to balance the interest of many competing groups when deciding issues much more than does the private sector manager.

Another very significant difference between public and private organizations is in the distribution of authority. In the private sector power is concentrated at the top, while in the public sector ultimate power is in the hands of the people.

b. Some Approaches to Labor Relations in the Public Sector. As has been discussed earlier, the goal of serving the public interest is veiwed as paramount by many students of government. The individual employer in government has special benefits such as civil service protection and no discrimination in hiring and promotion, but concomitantly he or she is also faced with rigid pay schedules, security checks, and a myriad of rules and regulations. Over time, public managers have lagged behind the private sector in the development of personnel policies designed to promote good employer-employee relations as well as efficiency. This absence of good personnel management occurred even while federal legislation with respect to labor was being debated and passed. (Wagner Act 1935, Taft-Hartley Act 1947, Landrum-Griffin Act 1959.)

One effort to remove politics from employment was the development of Civil Service. This concept is designed to promote fairness in government employment. A complication peculiar to the public sector is that unions have focused their lobbying efforts on elected officials and legislative bodies rather than on the public manager. The reason is obvious. Elected officials are much more sensitive to union influence than are professional public managers because of the union's ability to influence elections. Thus the professional manager has not been confronted with personnel and labor-relations problems, but has been bypassed in favor of elected officials.

5. Prospects.

Times are changing and the challenge of unionism in the public sector will continue to grow. States without collective bargaining laws will be pressed by unions to enact such legislation. Moreover, the large system of higher education--both private and public--is relatively untouched by unionism, but it is likely that professional unions like the NEA and AFT will seek to organize these institutions of higher learning. The federal government will also be subjected to pressures for legislation allowing federal employees at least as much in the way of collective bargaining as many state and local employees have.

Organizing efforts will not be peculiar to the public sector. The unions recognize a need to organize the South and this is the challenge facing them in the coming years. It will be a hard battle, for private sector unions are facing sophisticated managers who know how to deal with people. This is in contrast to organizing in the 30's and 40's. The unions must save the level of the debate and stimulate the working man to see the utility of union membership and this will not be an easy task.

6. Summary.

This session discussed some reasons for collective bargaining, the evaluation of public policy in the private and public sectors and the nature of public policy with respect to labor relations. The trend is clear: unions in both the public and private sector will press for membership gains.

Such activity is not to be feared; collective bargaining in America is and has been one of the world's most exciting and successful social experiments in conflict resolution. It requires sensitive and sophisticated union and management officials who can operate in the vague and sometimes irrational arena of bargaining. It is critical that public managers rise to the challenge, that they learn how to initiate demands to unions rather than simply respond to the union demands. It is imperative that management know its goals and understand the means to reach these goals. Public managers involved in collective bargaining need to be aware of techniques of conflict resolution as well as familiar with public finance. They must increase their bargaining and negotiating power so that the results of the bargaining process meet with approval of the public as well as the parties.

Government is a labor-intensive industry and labor-management relations are one key component of the public sector life.

QUESTIONS ON CASE

1. (a) Why did the power policies of the union fail?

   (b) What role did expectations play in causing the strike?

2. How credible were the city's financial statements?

3. (a) Was the city bargaining team unified?

   (b) If not, what effect did the lack of cohesion have on the situation?

4. What are the strengths of

   (a) The union?

   (b) The management?

5) How would a legal and binding contract have helped the situation?

6) What sort of planning was carried on by the union and by management?

NOTE: These questions are included in the Student's Manual along with the Atlanta Sanitation Strike Case.

Module III - Class 3

THE ROLE OF FEDERAL & STATE LAW IN PUBLIC SECTOR LABOR RELATIONS: HISTORY, ORGANIZATION & RECOGNITION

I. Objectives

- to acquaint participants with key aspects of federal and state public sector labor laws.
- to encourage participants to apply their experience to patterns typical in public sector labor relations.
- to enable students to understand the relationships between public sector attorneys and management personnel in confronting a union situation.
- how federal regulations affect local public sector bargaining.

II. Procedure

A. Prior preparation by participants in analyzing Hypothetical Fact Situations. (Handout for Class 3, to be distributed at previous class session.)

B. Lecture on historical development of public sector law and legal regulation of organizational and recognitional phases of public sector labor relations.

C. Analysis in class of Hypothetical Fact Situations applying the learning from the lecture period.

Session Outline (three hours)

1. Introductory lecture on the role of law in public sector labor relations (ten minutes).

2. History of public sector law (fifteen minutes).

3. State public sector regulatory models and legal regulation of the organizational phase (fifty minutes).

4. Analysis by the participants of Hypothetical Fact Situations, Hypos #1 and #2 (twenty minutes).

5. Lecture on legal regulation of the recognition phase (fifty minutes).

6. Analysis by the participants of Hypothetical Fact Situations, Hypos #3, #4, #5, #6 and #7 (twenty minutes).

Classroom Procedure

It is unlikely that any of the participants in the class will be attorneys. The primary purpose of the sessions on the legal aspects of public sector labor relations is to inform non-lawyers on legal aspects of public sector labor relations. The instructor should not give the participants a false sense of complete understanding and ability in this area. Competent labor-law attorneys with years of experience in the public sector often have difficulty analyzing the sophisticated legal problems which arise.

The participants usually show great interest in public sector law.

The instructor must avoid giving legal advice on current legal problems which may be confronting some of the participants. Actual incidents may be useful vehicles for discussing what facts would be relevant in making a legal determination. While it is not essential that the instructor be a lawyer, he certainly should have a great familiarity with the municipal matters to be presented.

In this area of the curriculum, the participants will have the opportunity to apply immediately the information they have received to the Hypothetical Fact Situations, which should have been distributed at the previous class session. Participants should review these problems prior to the class. There is no need to discuss the problems before the pertinent material has been covered by the lecturer.

Analysis of the problem will serve several purposes: (1) Give the instructor feed-back on how the lecture material was received by the students; (2) Enable the students to test their understanding of some difficult legal concepts; (3) Serve as a summary of the material covered.

We must stress the limitations of the course sessions on the law of public sector labor relations. The purpose of the course and lectures is not to train experts in legal analysis. Its objective is to make the participants realize the legal implications of managerial decision-making functions.

III. Lecture Material

A. Lecture Content Outline. Class 3 The Role of Federal & State Law in Public Sector Labor Relations: History, Organization & Recognition.

1. Introduction.
   a. Elementary legal principles.
2. Historical Perspective.
   a. Early development.
   b. New York City.
   c. Federal sector.
3. A Public Sector Model.
4. Organizing.
   a. Guideposts.
   b. Aspects of the campaign.
   c. Rules governing organizing.
5. Recognition.
6. Hypothetical Situations.

B. Lecture. Class 3 The Role of Federal & State Law in Public Sector Labor Relations: History, Organization & Recognition.

1. Introduction. This session will introduce you to some of the legal aspects of the organizational and recognitional phases of public sector labor relations. This material describes the legal issues which may arise in your particular municipalities. You should recognize, however, that there is no distinct line between legal and managerial decisions. Every managerial decision you make will have legal implications. Every situation has unique aspects. Situations which raise legal aspects do occur in the public sector.

Precise legal answers to individual cases require the expert advice of a labor lawyer. The issues which arise in public sector labor relations with legal implications cover not only statutory law enacted by the legislature but also constitutional law. These issues can sometimes be difficult even for lawyers to answer.

This session will inform you in a general way on some of the legal principles controlling public sector labor relations. It will also suggest facts which must be gathered to obtain good legal advice.

Public sector labor relations law is indeed a "crazy quilt". Each state has designed its own labor law system. Our discussion will be directed toward the variety of experiences in this area. In the six hours available to deal with the legal aspects of public sector labor relations, we can only touch on problems you might confront. This is really an introduction to an introduction.

The first session will first deal briefly with the history of the development of the law of public sector labor relations. It will then look at legal aspects covering the organizational and recognitional phases of municipal labor relations.

The second session will deal with the legal aspects of the collective bargaining process. Although we shall talk about the legal "problems" facing the public sector manager, they should be considered "opportunities" for informed and thoughtful management.

The age of municipal unionism is now here, and is growing. The law has not yet caught up to the reality of organization. The law being used successfully by the private sector has been borrowed by the public sector. We shall look to the private sector's experience in collective bargaining for guidance in the public sector.

2. Historical Perspective. In 1840, President Van Buren issued an Executive Order establishing the ten-hour day for federal employees. This action was a result of employee organization and a work stoppage by government workers in the 1830's. In 1868 the 8-hour day was instituted for federal employees.

A major change in federal labor relations law in 1883 established the Civil Service System to minimize the impact of political party favoritism. The continuing impact of Civil Service regulations on public sector labor relations law will be discussed later in these sessions.

Early organization of federal employees was strongest in the postal service. A major development in the federal sector was the Lloyd-LaFollette Act of 1912. This law granted federal employees the right to form and join labor organizations and to petition or lobby Congress for redress of grievances.

In the 1930's, employees of the Tennessee Valley Authority, the Alaskan National Railroad, and some units of the Department of Interior gained collective bargaining rights.

On local levels, the first major development in law involving public sector labor relations came in 1958. Mayor Robert F. Wagner, Jr., issued an Executive Order providing a degree of collective bargaining for employees of the City of New York. The following year Wisconsin expanded its State Labor Relations Act to cover county and municipal employees. Now, 38 states have some type of public employee legislation or executive orders covering one or more employee classes, types or occupations.

Federal sector law was classified on January 17, 1962, when President Kennedy issued Executive Order 10988, "Employee-Management Cooperation in the Federal Service". This order was modified by President Nixon in 1969 in Executive Order 11491, "Labor-Management Relations in the Federal Service".

In recent developments of public sector law, Connecticut set up fullscope bargaining for its state employees; Indiana brought most of its state and local government employees under its Teacher Law; Maine gave its state university employees bargaining rights; New Hampshire revised its laws into one comprehensive statute; Utah granted firefighters bargaining rights; and the state of Washington enacted a comprehensive teacher labor relations law.

Public sector unionism is not a recent occurrency. However, the major activity for laws in this sector has come within the past two decades. Public sector law in most states is out of its infancy and into its adolescence, but still showing growing pains. Different regulations exist in each jurisdiction. To understand public sector law, therefore, requires close attention to the regulations used in your state.

3. State Public Employee Regulatory Model. Most states have adopted a regulatory system for public sector labor relations that is based upon experiences in the private sector.

The public sector law is administered by a board of commission. The board can be an existing agency, as in Connecticut, Massachusetts, Michigan, Nebrasks, Pennsylvania, Rhode Island, and Wisconsin. Or it can be a new agency, as in Florida, Indiana, Iowa, Kansas, Kentucky, Maine, Minnesota, Nevada, New Hampshire, and Oklahoma.

The enabling statute enumerates the duties, privileges and guaranteed rights of public employees and public management. For example, a typical statute protects these employee rights: the right to engage in organizing activities, the right to select an agent to handle collective bargaining, and the duty of both sides to bargain collectively in good faith.

In their enabling legislation, several states have expressly authorized or mandated a grievance procedure which may or must provide for binding arbitration.

Statutes usually list the subjects over which bargaining must take place. Many states require the inclusion in every collective bargaining agreement of a management-rights clause. Indiana, Iowa, Kansas, Montana, Nevada, New Hampshire, North Dakota, Vermont, and New Mexico are examples.

Some states deal specifically with the relationship between the Civil Service System and employee's job rights. California, Hawaii, Maine, Washington and Wisconsin grant Civil Service a status superior to collective bargaining. A major problem which has arisen in the public sector involving seniority is the coordination of the Civil Service System with the collective bargaining system.

State legislation will usually spell out the method of resolution of bargaining impasses. All statutes provide for mediation of disputes, whether by the agency itself, an outside agency, or ad hoc mediators. Most statutes provide for a fact-finding procedure. Some require binding arbitration.

State statutes usually enumerate actions which constitute unfair labor practices, following the intent of Sections 8(a) and (b) of the National Labor Relations Act which bars interference, restraint, or coercion by either side, and imposing a mutual bargaining obligation upon both parties.

Unlike the private sector, the provision barring a secondary boycott is rare in the public sector.

Most states expressly prohibit public employees from striking. There are some exceptions: Hawaii, Pennsylvania, Minnesota, Montana, Oregon, Vermont and Alabama. Some of these states ban police and firefighter strikes. Some also allow for prohibition, through court order, of strikes which endanger public health and safety.

4. The Organizational Phase. Organizing public employees into unions is controlled by statutory references in some states, and also by the state constitution. The employers are the governments and they must conduct themselves face-to-face with their employees and authorized organizers in accord with constitutional principles.

Blanket laws which prohibit union organization are unconstitutional as an abridgement of freedom of speech and association under the First Amendment to the Constitution. In Keyishian v. Board of Regents, 385 U.S. 589 (1967), the Supreme Court stated, "Public employment... may (not) be conditioned upon the surrender of constitutional rights which could not be abridged by direct governmental action." In the case of a teacher dismissed because of his membership in a union, the Seventh Circuit Court of Appeals sitting in Chicago held that: "It is settled that teachers have the right of free association. Unjustified interference with teachers' associational freedom violates the due process clause of the Fourteenth Amendment . . . Public employment may not be subjected to unreasonable conditions; the assertion of First Amendment rights by teachers will usually not warrant their dismissal . . . Unless there is some illegal intent, an individual's right to form and join a union is protected by the First Amendment."

In the organizational phase of labor relations, the public and private sectors may have different guideposts.

Normally, the first objective of union organizers in organizing public employees is to obtain a signed verification from employees that they wish to be represented by a union for collective bargaining with their public employer. A tactic usually employed is the signing of authorization cards stating that the employee wishes to become a member of the union. In some states, a written petition is also circulated for employees to sign.

To encourage employees to sign authorization cards, unions will seek to spread the "gospel" of unionism by talking with employees and distributing union literature. The distributions will include leaflets, flyers, letters to employees at their homes, which "sell" the advantages of unionization, and claims of what unions have done for employees in other public sectors.

Face-to-face solicitation is a common method for organizing, with an attempt to get the employees to sign an authorization card.

At this early stage in organizing, what can a municipal manager do? Once a union is on the scene organizing, the employer's options have become limited. What could have the municipal manager done before the start of organizing activity by the union?

Good management-employee relations include management's responsibility to define employee policy fully. Where employees have uncertainty about their status, unions find them ripe for organization. An employee's handbook of rights, duties and responsibilities goes far to reduce this uncertainty.

The second major cause of successful organization is the inadequacy of wages and terms and conditions of employment. In the private sector, unions win fewer than half of all representational elections. Enlightened labor relations policy usually keeps unionism from being a foregone conclusion.

Management should review its existing personnel policies and practices before the union arrives so that work rules, productivity standards, conduct and disciplinary standards are established and communicated to the employees. An internal grievance procedure before unionization comes about can deal with problems and stave off unionism.

Public management can oppose unionization of its employees unless the state law dictates that management stay neutral. Opposition can consist of practical and legal strategies.

It is difficult to decide whether you want to oppose unionization.

There are advantages and disadvantages for management from unionization. Unions often help management control a large work force. However, unionization definitely constitutes some loss of managerial discretion.

Sometimes a reason for the growth of unions is the psychology of union expansion. "Going union" sometimes seems "the thing to do". Some commentators have suggested that the rapid growth of public sector unionism is the result of enactment of statutes covering this sector. These statutes make public sector unions legitimate and establish their rights to organize and to bargain collectively. The agency established to oversee public sector unionization protects those rights and establishes a procedure for certifying unions.

However, the growth of public unionism in states which do not have public sector laws, such as Ohio before 1977, seems to indicate that public unionism can grow without statutory authorization.

At the early stages of union organization, avoid panic among public management and lower level supervisors. Union activity should not be viewed by the public manager as a personal challenge. Illegal conduct by public management at this stage can spur the growth of unionism among employees. Illegal dischange of a union organizer can become the crusade of the organizing campaign. An employee has a constitutional right under the First Amendment to refrain from association and organization, or to participate. Employees can be advised of this right. Public management should keep a file of all union distributions, promises, and activities. Treat all parties fairly, with an even hand, and enforce work rules impartially. Maintain the status quo. You should continue to manage your "business as usual".

A union cannot coerce employees into joining. Threats of force, intimidation, and the like constitute violations of the criminal laws, and should be dealt with as such by the public manager. Employees can be informed that if anyone is coercing them in any way, they should inform the proper authorities.

Union organizers must be allowed to distribute union materials on public property, sidewalks, public parking lots, and areas generally open to the public. With regard to non-employee access to a public employer's premises, the law is uncertain. In the private sector the law is quite clear that non-employees have access to private property only when there are no reasonable alternative channels of communication with employees. A public employer's property is of course public property, but organizing efforts cannot be allowed to disrupt the municipality's functioning.

Reasonable regulation of the time and place of organizing should be permitted. With regard to union solicitation of union membership, an employer has a legitimate right to have his employees spend their work time working. He is rightly concerned about safety, productive efficiency, and discipline.

Under the First Amendment rights, union organizers can spread information concerning unionization.

Employees have the right to obtain information necessary to make the choice between union and non-union.

In general, the First Amendment does allow for reasonable limitation upon the exercise of free speech and association rights. One such reasonable limitation is to conduct union activity so as to minimize detrimental effect on productive efficiency. The private sector's experience with solicitation of employees suggests that organizers be allowed to solicit other employees on non-work time in both work and non-work areas. An employer, however, is allowed to bar distribution of literature in work areas at all time. These limitations seem reasonable when applied in the public sector. They give the union access to employees at a time when the legitimate interest of the public employer are not sacrificed.

It is important that the public manager post a notice of the time during which solicitation may take place. The rule should be uniformly enforced. You can't allow the Red Cross or United Fund in and keep the union out. Employees are allowed to wear union buttons, except where there are safety or discipline rules which the buttons would interfere with, when the buttons would affect productive efficiency.

Frequently, a union commencing an organization drive will communicate with the public employer to inform him that the union is on the scene. Unions do this so they can prove later that the employer had knowledge of union activity if he takes discriminatory action against those who exercised their right to associate. Employees can be informed, however, that their interest in the union will not gain them favored treatment.

An employer must not spy upon employee organizing activity or take pictures of organizing efforts. Supervisors should stay away from union meetings. Courts in Wisconsin and Michigan have ruled under their statutes that this type of conduct constitutes unfair labor practices. An employer may feel a natural human curiosity about what is going on, but questioning employees about their union activities or sentiments may constitute illegal interrogation. Such questioning naturally has a coercive effect on employees. In the private sector, questioning is generally censured, unless the employer has some legitimate reason to find out whether the union does indeed represent a majority of employees which it has claimed.

Threats against employees and promises of benefits by management are likewise censured in the private sector. They will undoubtedly be similarly treated in the public sector. Such threats and promises are sometimes expressed or implied, and constitute interference with constitutionally protected associational rights. Finally, if the public manager should want his employees represented by a particular union, he should not lend illegal support to the union organizing effort. The basic rule is: The public employer should let the union do its job without employer support.

4. *The Recognitional Stage*. Wherever allowed by law, it is to the union's advantage to obtain voluntary recognition from the employer. It eliminates the need to test the union's majority strength through an election process.

It may also be to the public employer's advantage to grant recognition in certain instances because a full election campaign disrupts the productive work and morale of public employees. Recognitional picketing, even if allowed under state statute, is likewise disruptive to management.

The union representative claiming representational status will undoubtedly present authorization cards or a petition signed by a majority of employees. In the private sector, management can always refuse to recognize a union voluntarily, and require an election. Under some state statutes, recognition may be obtained only through an election procedure and voluntary recognition is unacceptable.

The union will usually demand recognition from the public employer for a certain group of employees. Which employees are included in this group is very crucial. In the *private* sector, a petition is filed by the union with the National Labor Relations Board seeking representation within a certain bargaining unit. Hearings may be held to determine whether the union seeks an "*appropriate* bargaining unit."

In the federal *public* sector, under Executive Order 11491, a union and employer may voluntarily agree that a union is appropriate. This determination is approved by the Area Administrator for the Assistant Secretary of Labor for Labor-Management Relations. The determination must be in conformity with the Executive Order for appropriate units.

Once that unit is determined, an election is ordered for those employees. If there is disagreement over the appropriateness of the unit, a hearing is held. If the petition for a unit is ruled not appropriate, the union must wait six months before petitioning for any other unit that includes employees in the unit originally proposed. The states have dealt in several ways with the question of unit determination. For example, under the Hawaii Public Sector Law, ten appropriate state-wide units for state employees are set up by occupational groupings. Bargaining units in Massachusetts are determined by consent between the employer and the union. In New York State, units are determined by the Public Employment Relations Board, which is bound by the statute to seek the "most appropriate"bargaining unit. In Wisconsin, the unit is determined by employee preference. In states without a comprehensive state law, the unit determination is generally by private agreement between the union and the public employer.

In determining the unit within which bargaining will take place, the basic need is to promote effective dealings and efficiency in the operations of the governmental body. Avoid inefficient fragmentation of units. However, police, firefighters, sanitation workers, and other groups are always likely to bargain separately with their public employer. One factor to be examined is whether the official representing the level of the government unit has the power to agree or to make effective recommendations on terms and conditions of employment.

Employees who have a clear and identifiable community of interest will normally be grouped together in bargaining units.

In the private sector, certain factors have been considered; many of these have been adopted in the public sector. These are: skills, duties, wages and hours, method of payment, supervision, desire of employees, history of bargaining.

Operating efficiency is especially important in determining public sector units. The organizational structure of the local municipality is quite relevant. Effective dealings must be facilitated to promote a stability in labor-management relations. Develop determinations which can avoid whip-sawing tactics by unions and which can avoid problems regarding reduction of force and can prevent promotion policies which affect many different units.

Units may be established on the basis of: traditional craft skills (plumbers, machinists), plant or department units, or functional units (e.g., all low-skilled employees city-wide).

Guards and professional employees will usually have separate representation. Public management must determine who will be included in each bargaining unit, since the determination will have important post-election impacts.

In situations where the decision on representation is to be made by means of an election, an election campaign will take place. The election itself might be conducted by the state agency or, in those states without a public sector law, by the American Arbitration Association.

The cost of having the Association hold the election is usually split between the union and the public management agency. Cost varies from $1 to $2 per vote.

An election agreement is usually signed, specifying when the election will be held, who will be allowed to vote, and where the election will be held. Assuming that neutrality is not mandated by statute, both the employer and the union are allowed to campaign.

Promises of benefits and threats of retribution, of course, are illegal and will adversely affect pro-employer election results. Yet, "propaganda" is fairly typical. Serious misrepresentations of important matters may weaken the election result, but reasonable exaggeration is generally allowed.

The election is usually held by secret ballot. Employees are given the choice of voting for "no union" as well as "for union".

The requirements for winning an election vary from jurisdiction to jurisdiction. Most states and the federal government assume that the winner is the party which receives a simple majority of votes cast. In New Mexico, however, the election is not valid unless 60% of all the employees eligible to vote in the election did vote. In Delaware, the union must receive votes equal to a majority of all those eligible to vote.

Run-off elections are a possibility. In the federal sector, a run-off is conducted if there is a tie; by comparison, in the private sector, if there is a tie, the union loses.

Once the election is completed and a union wins, public management must now deal with that union as the exclusive representative of all employees in the unit.

The stage is now set for the collective bargaining process. The union must represent all the employees within the unit fairly and without discrimination. This means both union and non-union workers.

The advent of a union in the public sector affects public management's unilateral decision-making prerogatives. Under the Federal Executive Order and many state laws, management's rights are preserved even after a union wins. These rights are: determine the "mission" of the public agency; hire, promote, transfer, assign or otherwise direct employees of the agency; take disciplinary actions in accordance with established merit principles.

However, it is clear that unionization does restrict management, as we shall see in our next session on the legal aspects of public sector labor relations. The coming of the union does not have to result in policies detrimental to government functions served by public management.

6. Here are Some Suggested Responses to Hypothetical Situations. Hypo #1: The Amalgamated has a constitutional right to organize employees, but not to coerce or intimidate them into union affiliation. Union tactics of solicitation and literature distribution are discussed in the lecture.

Public management's ability to oppose unionization depends upon state law. However, the decision whether public management wants to oppose unionism is much more difficult. The costs, benefits and disadvantages of unionization must be weighed fully.

At the early stage in organization, public management needs advice on legal strategies. In particular, the problem of whether the employer must allow non-employee organizers access to the employees' work place must be resolved.

Hypo #2: Public management must obtain facts about the methods by which the Amalgamated obtains signatures of employees.

It must be careful not to interrogate employees about their union activities, since this would constitute an unfair labor practice under most state statutes. The rights of the Amalgamated to solicit votes during work time will depend upon the law of that state. The general guideline is that work time is for work only.

Hypo #3: The response of public management to the demand for recognition depends on the law of the particular state involved. Some states allow voluntary recognition; some prohibit it. Public management may also decide that it wants to have its employees unionized, and then give voluntary recognition. If voluntary recognition is allowed and preferred, public management must make sure that the union will represent a majority of employees within the unit claimed. This is done by checking the signatures on the cards or petition against signatures of employees on the W-4 tax form.

Hypo #4: The importance of designing a functionally efficient bargaining unit has been discussed thoroughly above. In most states, public management has an important role to play concerning this determination.

Hypo #5: Assuming that state law allows management activity in unionization attempts, a note informing employees of their right to refrain from union activity such as suggested in Paragraph 1 is appropriate. The posted rule in Paragraph 2 is also in accordance with most legal regulations of solicitation activity. Supervisors can be asked to continue an existing practice concerning employee grievances. But establishing new practices that coincide with the rise of union organizing will be suspected. Employers must not grant benefits to employees to win them away from unionization. A management speech concerning hard bargaining can be appropriate as long as it does not contain a threat to take away benefits. Make such statements conditional: Unionization may mean an increase, or may mean a decrease in benefits.

Hypo #6: Depending on the law of the jurisdiction, a municipality can usually be held accountable for the actions of front-line supervisors. They should be advised by management by written memoranda about the "Do's & Dont's" of management response to union activity.

Hypo #7: No employee should be given any special privileges because of his affiliation with the union. And Larry Loser is no exception. He is certainly not immune from discipline just because he has signed a union authorization card. He should be treated just as he was treated before.

Handout for Class 3

THE ROLE OF FEDERAL AND STATE LAW WITH RESPECT TO PUBLIC SECTOR LABOR RELATIONS: HISTORY, ORGANIZATION AND RECOGNITION

Hypo #1

You have heard that the Amalgamated Public Employees Union has begun to organize your employees. Can it do this? What tactics can union organizers legally use? Can you oppose unionization? Do you want to? What legal advice should you get at this early stage of organization?

Hypo #2

The Amalgamated has, in fact, begun an organizing campaign, distributing literature, soliciting union support, seeking signatures on authorization cards, and (it is rumored) "coercing" employees into signing a petition endorsing the union. What facts must you collect in order to obtain proper legal advice during the organizing phase? How can you obtain those facts? Can the Amalgamated solicit support during work time? In work areas?

Hypo #3

The Amalgamated's representative comes into your office and informs you that your employees have selected the union to represent them. He demands that you recognize the union as exclusive representative and work out a collective bargaining agreement. What do you do?

Hypo #4

Assume you do not voluntarily recognize the Amalgamated and, either under the state agency procedure or by private agreement, you decide that an election should be held to determine employee interest in being represented. What legal advice do you need at the election state (e.g., campaign tactics, appropriate bargaining unit determination, conduct of the election, etc.)?

Hypo #5: The Management Response.

The Amalgamated is organizing your sanitation workers. They have distributed union flyers to your employees which indicate that joining the union will result in higher wages, extra holidays, and better working conditions. Your management team has decided that some response to the organizing effort is warranted. Evaluate the following proposals:

1. Distribute to the workers in their pay envelopes the following note:

   "Employees of our City have the right to join labor organizations if they believe it is in their best interests. We wish to remind you that you have the right to REFRAIN from any union activity if you so desire."

2. Post a rule on all bulletin boards stating:

   "Work time is for work. No solicitation for any purpose is allowed during working hours. Solicitation is allowed during non-work time."

3. Ask supervisors to continue to find out what grievances or problems the sanitation workers may have, a practice the supervisors have followed for the past two years on a regular basis.

4. Call a meeting of sanitation workers during working hours to refute the Amalgamated's claims that unionism will necessarily mean an increase in benefits; explaining that bargaining "starts from scratch".

Hypo #6: Controlling Your Supervisors.

You are aware that your frontline supervisors are not happy with the prospect that the Amalgamated may organize your employees. Can the municipality be held accountable for supervisors' actions such as giving the pro-union advocates the "dirty work" or stifling all discussion of the union at any time during the working day? If so, how do you transmit appropriate guidelines to your lower-level management personnel?

Hypo #7: The Trouble-maker.

Larry Loser has been a sanitation worker for your town for three years. He has been far from an "ideal" employee, with a record of tardiness, unexcused absences and disciplinary problems at work. With the arrival of the union, Loser is the first to sign an authorization card. He tells his supervisor that he is now immune from discipline. The supervisor asks you whether he is right. Is he?

Module III - Class 4

THE ROLE OF FEDERAL & STATE LAW WITH RESPECT TO PUBLIC SECTOR LABOR RELATIONS COLLECTIVE BARGAINING, RESOLUTION OF IMPASSES, AND THE RIGHT TO STRIKE

I. Objectives

- to acquaint participants with key aspects of federal and state public sector law.
- to show participants how to deal with labor relations in the public sector.
- to acquaint participants with interrelationships between municipal attorneys and public sector personnel management in solving problems with unions.

II. Procedure

A. Prior preparation by participants in analyzing hypothetical fact situations. (See "Handout for Class 4" to be distributed at previous class session.)

B. Lecture on the legal regulations covering collective bargaining in public sector labor relations.

C. Analysis in class of Hypothetical Fact Situations, applying what was learned from this lecture.

Session Outline (three hours)

1. Lecture on "good-faith" bargaining, the meet-and-confer system, and the range of subjects over which bargaining must take place (seventy minutes).

2. Analysis by participants of Hypothetical Fact Situations, Hypos #8, #9, #10 and #11 (thirty minutes).

3. Lecture on resolving impasses and the legal regulation of strikes in the public sector (forty-five minutes).

4. Analysis by participants of Hypothetical Fact Situations, Hypos #12, #13, #14, #15, #16, #17 and #18 (twenty minutes).

Discussion of Classroon Experience

Many cautions expressed in the previous material on the legal aspects of public sector labor relations should be repeated in this session. Now that the participants have been exposed to legal materials and have analyzed hypothetical fact situations based upon that material, the risk increases that they will ignore the distinction between a managerial role and a legal counseling role. The instructor should refresh their memories with regard to these limitations. (See "Discussion", Module III class 2, page VIII.3.12).

Since the participants have already had one class based on a lecture followed by application of principles learned, they are now able to make better use of the handout given them before this class. Individual instructors may wish to integrate the Hypothetical Fact Situations into the lecture material by discussing the hypotheticals and then presenting comprehensive responses. Testing these materials has indicated that the procedure of full lecture followed by analysis has worked well, too.

Legal aspects of the collective bargaining process are usually not as critical as the managerial and bargaining skills of negotiation. Experience with the private sector has shown that the legal questions of good-faith bargaining and the delineation of mandatory vs. permissive subjects of bargaining often wash out because the parties reach agreement on a new contract. Nonetheless, this subject is important to the participants in guiding their preparation for the collective bargaining process and in understanding this process.

It should be emphasized in presenting the material in this session and in the earlier session that the law in public sector labor relations is dynamic, not static. The models discussed and the principles evaluated will undoubtedly remain. Yet the particulars of the law in each state will develop as public sector labor relations mature.

The instructor should remember that facts in the lecture materials should be updated by him. However, the basic outlines of the class presentation should prove valuable over a long period of time. The Hypothetical Fact Situations should be helpful as a teaching tool for some time.

III. Lecture Material

A. Lecture Content Outline. Class 4. The Role of Federal and State Law with Respect to Public Sector Labor Relations Collective Bargaining, Resolution of Impasses, and the Right to Strike.

1. Introduction.
   a. Legal aspects of public sector bargaining.
2. Bargaining in Good Faith.
   a. What is it?
3. Meet-and-Confer Negotiations.
   a. Definition.
4. The Duty to Bargain.
   a. Scope of bargaining.
   b. Effect of Civil Service rules.
5. Impasse Resolution.
   a. State impasse procedures.
   b. Mediation.
6. Right to Strike.
7. Hypothetical Situations 8 - 18.

B. Lecture. Class 4 The Role of Federal and State Law with Respect to Public Sector Labor Relations Collective Bargaining, Resolution of Impasses, and the Right to Strike.

1. Introduction. This session will continue the discussion of legal aspects of public sector labor relations. In our earlier session, we discussed the organizational and recognitional phases of the establishment of a collective relationship in the public sector.

Now that a union has been established as majority representative of government employees within an appropriate bargaining unit, the issues which arise concern the collective bargaining process and the union's right to strike. Please heed earlier cautions with regard to your limitations on the law in this area. You must be alert to certain legal issues. It is equally important for you to recognize your basic role as a public manager and your limitations as a lawyer. Most legal problems require experienced legal counsel.

Note that the legal aspects of collective bargaining and the right to strike often play a secondary role to true decision-making. Public management may not be required to bargain over certain issues with public unions. As a matter of good employer-employee relations, it can be beneficial to discuss matters over which no bargaining can occur.

The relationship between public management and the unions representing public employees is a long-range one. Its success depends in large measure upon the personal understanding between the people involved. The law sometimes plays a secondary role.

However, you should know the legal rights and obligations in your particular state with regard to public sector bargaining and the possibility of a strike. Successful collective bargaining requires an appreciation of both the law and the realities of any situation.

2. Bargaining in Good Faith. "What constitutes good faith?" is a question that has troubled labor law scholars for years.

The definition of good faith is based on a pattern of conduct. Certain particularly censurable actions by one party or another will constitute a breach of the bargaining duty.

Parties in collective negotiations must conduct themselves so as to facilitate agreement. The state statutes discussed in an earlier session usually state that there is no duty by either party to agree to any proposal or make a concession. Thus, the parties must eagerly try to reach an agreement but they have no duty to reach agreement nor give an inch.

Clearly, when one party acts to frustrate agreement by his behavior at the bargaining table he is not bargaining in good faith. For example, stalling tactics and delaying tactics show bad faith. So will withdrawal of concessions which were once made and disruption of negotiations.

Certain acts standing alone would be sufficient to indicate a lack of good-faith bargaining. For example: failure to meet when requested to by the other party, refusal to bargain over subjects considered to be mandatory subjects of bargaining, and refusal to sign an agreement that has been reached.

The statutory provisions in the various states generally set forth two different rules of collective bargaining. The common formula required the parties to bargain collectively over terms and conditions of employment. The other formula only required the parties to meet-and-confer. We shall disucss the two formulas.

It is generally recognized that no one has a constitutional "right" to demand collective bargaining. Here are two court rulings: *Alaniz v. San Antonio*, 80 LRRM 2983 (W.D. Tex. 1971); *Indianapolis Educ. Assn. v* Lewallen, 72 LRRM 2071 (7th Cir. 1969). On the other hand, the law in some jurisdictions, even in the absence of an enabling statute, grants a public body the authority or right to bargain with the union: *Dayton Teachers Assn. v Dayton Bd. of Educ.*, 41 Ohio St. 2d 127 (1975). While state statutes may grant public employees the right to strike in certain instances, to be discussed later, there is no *constitutional* right to strike: *Postal Clerks v Blount*, 325 F. Supp. 879 (D.D.C. 1971).

3. The Meet-and-Confer Method of Pursuing Collective Bargaining. Ten state statutes require public employers to meet and confer with unions representing their employees. These are: California, Idaho, Kansas, Minnesota, Missouri, Montana, Oregon, South Dakota, Maine and Alabama. These statutes may appear to impose less obligation than bargaining in good faith. However, as applied in some of these states, the statutory obligation is much like that in other areas.

The GERR Reference File Glossary states that meet-and-confer statutes "usually imply discussions leading to unilateral adoption of policy by a legislative body rather than written contract, and take place with multiple employee representatives rather than exclusive bargaining agents." The key to the meet-and-confer system is the requirement for discussions, as opposed to collective bargaining with joint decision-making by equal partners. Bargaining under pure meet-and-confer statutes rarely operates as such. "They offer more to the eye than to the touch.": *N.E.A. v Bd. of Educ. of Johnson County, Kansas*, 212 Kan. 741 (1973). Some commentators have referred to the meet-and-confer model as "collective begging" on the part of the union. The Kansas statute, for example, requires the parties "to exchange freely information, opinions and proposals to endeavor to reach agreement on conditions of employment." This constitutes a modified meet-and-confer duty looking towards the establishment of an agreement. Professor Harry Edwards of Harvard concludes that the entire meet-and-confer approach is obsolete and will pass with time. (Edwards, *An Overview of the "Meet-and-Confer"States*, 16 *Law Quandrangle Notes* 10, 1972). It appears that many jurisdictions that follow the meet-and-confer form in fact have moved towards real collective bargaining.

4. The Collective Bargaining Model of Ordering the Collective Relationship. Archibald Cox has described the duty to bargain as follows: "The employer (or union) must engage in negotiations with a sincere desire to reach an agreement and must make an earnest effort to reach a common ground, but it need make no concessions and may reject any terms it deems unacceptable." Thus, the collective bargaining method calls for an attitude of settlement on the part of both parties, with concentration on meeting-place conduct, which may be termed "table manners". An essential component of this approach is the authority the bargaining team must have to conclude an agreement or to recommend approval of the agreement when reached.

The scope of bargaining--those issues over which bargaining must take place--varies substantially from one state to another. In the private sectors, employers must bargain over wages, hours, and other terms and conditions of employment, and these categories which have been widely interpreted. In the federal sector, under Executive Order 11491, the scope of bargaining is defined thus:

> "An agency and a labor organization....shall meet at reasonable times and confer in good faith with respect to personnel policies and practices and matters affecting working conditions, so far as may be appropriate under applicable laws and regulations...."

The Federal Labor Relations Council is the final authority in determining if a matter is negotiable. In general, the Council has not used the categories of the private sector, wherein matters are designated as: mandatory subjects, permissible subjects and prohibited subjects. The FLRC, however, seems in recent years to be broadening what is bargainable in the federal sector.

State statutes vary in their definition of the scope of bargaining. For example, the California statute states that "all matters relating to employment conditions and employer-employee relations, including but not limited to wages, hours, and other terms and conditions of employment" must be bargained over. This definition may be even broader than in the National Labor Relations Act covering the private sector.

Serious conflicts often arise in public sector collective bargaining over the relationship between the collective bargaining system and the traditional Civil Service system.

The Civil Service encompasses a broad personnel program. It covers matters over which public management can exercise unilateral decision-making. For example, recruiting and selecting employees, policing anti-political and anti-discrimination rules, grievance resolution, classification of jobs, pay administration, job evaluation, employee benefit programs, employee training, safety, morale, and attendance control.

Such a comprehensive scheme may conflict with certain important union goals, such as seniority and union security. The state legislatures have dealt in several ways with this conflict. Some state statutes expressly grant Civil Service a status above collective bargaining, either by a blanket exclusion of these matters from collective bargaining or by selective exclusion of certain merit-related Civil Service subjects. This is the status in California, Hawaii, Maine, Washington, Wisconsin, Indiana, Iowa, Kansas, Montana, Nevada, New Hampshire, North Dakota, Vermont, New Mexico and Connecticut. On the other hand, Michigan courts have held that the authority of the Civil Service System must give way to collective bargaining: C.S.C. v Wayne County Bd. of Supervisors, 384 Mich. 363 (1971).

As collective bargaining develops and matures, Civil Service Commission functions will probably become limited to recruitment, examination and placement.

Some state statutes make no reference to the relationship between collective bargaining and Civil Service: Delaware, Michigan, Minnesota, Missouri, Nevada, New Jersey, New York, Oregon, South Dakota, and the Wisconsin Municipal Public Employee Law.

Another major issue included in some state statutes is a grievance procedure in the collective bargaining agreement between the public employer and the public union. Some states require a grievance procedure in such an agreement: Alaska, California, Connecticut, Hawaii, Indiana, Iowa, Kansas, Maine, Maryland, Massachusetts, Montana, Nevada, New York, Oklahoma, Oregon, South Dakota, Vermont, Washington, Wisconsin, and the District of Columbia.

Regarding management rights, some statutes totally exclude these matters from bargaining: Pennsylvania, Vermont, and California.

Some states exclude bargaining over union security matters; Delaware is one. A union shop is allowed in some states: Alaska, New Hampshire, Kentucky and Vermont. A union security maintenance-of-membership provision is allowed in Pennsylvania, but the most typical formulation allows for an agency shop, often called a "fair-share agreement": New York, District of Columbia, Hawaii, Massachusetts, Michigan, Minnesota, Montana, Oregon and Wisconsin.

In the federal sector and most states the deduction of union dues is permitted, although the Alabama statute expressly prohibits it.

Questions arise over whether other issues fall within the list of subjects of required bargaining: manning of fire trucks has been held to be a subject of mandatory bargaining in New York State; promotion procedures and requirements have been held to be mandatory subjects under Michigan Law.

Except where expressly prohibited by statute, the scope of bargaining in any particular municipality will probably be determined by practical considerations. Good bargaining technique requires appreciation of the legitimate interests of the parties and costs of agreeing to certain items, both in monetary terms and in loss of managerial direction.

One factor distinguishes public sector negotiations from the private sector: some statutes require the parties to include certain provisions in their agreement--grievance procedures, for example. Even in these cases, though, negotiation can be had over the details of the clauses in question.

5. Techniques for Resolution of Bargaining Impasses. Obviously the best way to resolve bargaining impasses is to reach voluntary agreement. Since the best is not always possible, the statutes of all jurisdictions include provision for use of mediation, fact-finding, or arbitration. All states with statutes provide for mediation. This function may be carried out by the state labor relations agency itself, as in New York, Michigan, Wisconsin, and Minnesota; or by a separate mediation agency, as in New Jersey, Pennsylvania, Connecticut, Massachusetts, and Oregon. In some states mediation is performed by ad hoc mediators: Iowa, Alaska, Florida, and Indiana. Note that the Federal Mediation and Concilation Service is available and active in the public sector.

Most statutes have set up fact-finding as the terminal point for the resolution of collective bargaining impasses. This process operates in a more formal atmosphere than mediation, with hearings and submission by the parties. The fact-finding board will make recommendations for settlement. These can be kept private, or made public to pressure the parties to a settlement.

Binding arbitration is sometimes employed to hold the parties to the decision of an impartial adjudicator. Advisory arbitration is sometimes used as an alternative.

The Federal Mediation and Conciliation Service will get involved in mediation upon the request of either or both parties to a negotiation. The FMCS will send out a mediator and assist in resolving an impasse. The FMCS also makes available educational services to help the parties learn to deal with each other.

When final and binding arbitration is provided by statute, the provision usually spells out those considerations which the arbitrator must weigh in making his determination. These are: past agreements, if any, between the parties; comparative wages, hours and terms and conditions of employment of employees doing comparable work in the private sector; interest and welfare of the public ability of the public employer to finance and administer the results; effect on normal local standards of public service; lawful authority of the public employer; the parties' own stipulations and agreement; and other normal and traditional factors taken into consideration by managers and decision-makers in the public sector.

6. The Right to Strike. The overwhelming number of states and the federal sector prohibit employee strikes. Yet the mere prohibition of the right to strike has not prevented strikes from occurring.

Statutes usually provide severe penalties for striking. The New York statute provides that striking employees may be placed on probation for one year without tenure and that an amount twice the daily pay for each day of the strike may be deducted for each striking employee. The union may also lose all representation rights. Dues check-offs can be stopped for a period determined by the state board and enforced by the state courts.

Under Ohio's Ferguson Act, striking employees are terminated, and they are to be rehired with no pay increase for at least one year. Employees are placed on probation for two years, and serve without tenure if reappointed.

Obviously, making strikes illegal does not prevent them. A key to preventing public sector strikes is to upgrade the quality of bargaining by the two parties. A goal of this course is to improve bargaining skills, and thereby reduce the number of illegal strikes. Collective bargaining is hard work: it should also be skilled work.

7. Suggested Responses to Hypothetical Situations in Handout.

Hypo #8: The essentials of the bargaining obligation have been discussed above. The instructor should emphasize that bargaining does not mean giving away everything. Nor does it mean that the public employer will give away nothing.

Hypo #9: What subjects must be bargained over depends upon the statutes of each state. There are subjects over which public management can refuse to bargain. One is the conflict over collective bargaining and Civil Service.

Hypo #10: This question is addressed less to legal requirements than to good bargaining tactics discussed in other sections of the curriculum. The question gives you the opportunity to remind your students that bargaining strategy is based chiefly on managerial decision-making and that legal implications may play a secondary role.

Hypo #11: The right of the Amalgamated to call a strike depends upon the law in the jurisdiction. If strikes are prohibited, which is most likely, one of the legal options available to the public employer is to file for an injunction under the relevant state statutory provision. There is no constitutional right to strike, although in some instances there may be a statutory right. The public manager should realize, however, that the best accommodation may be one which is agreed to privately by both sides. Even if the strike is enjoined, bargaining will continue.

Hypo #12: Refusal to set a date to commence bargaining would constitute bad-faith bargaining, since it appears to be a stalling tactic. The primary duty is to "meet". Failure to agree to meet within a reasonable time is bad faith. The fact that one member of the bargaining team is unavailable may be justification for a brief delay. However, extended delay would indicate bad faith, since some other person could probably fill in.

Hypo #13: This tactic certainly constitutes bad-faith bargaining. It is welshing across the board on agreements tentatively reached. By custom, all agreed-to provisions are still tentative and can be altered in the course of negotiations, but this type of conduct does indicate a desire to frustrate agreement. It would be a breach of your duty to bargain in good faith.

Hypo #14: An employer can implement a unilateral change in terms and conditions of employment only after an impasse is reached on the matter. Mere inability to reach agreement is not an impasse. Positions must be totally intractable to constitute a true impasse. An impasse is generally something which happens and cannot be engineered. For this reason, the situation cited is an unfair labor practice.

Hypo #15: You must bargain with the employees through their representative, not through the employees to the representative. The questionnaire would down-grade the union in the eyes of its members and undercut its representative status. This would probably constitute an unfair labor practice under most state statutes.

The leaflet is less censurable, but it still poses a risk to the employer, under various state statutes. The public employer should be sure that the leaflet is not coercive in tone and does not contain threats or offers of benefits.

Hypo #16: The "stonewall" is bad-faith bargaining. The public employer must at least give reasons for his refusal to agree to anything.

Hypo #17: This is probably good-faith bargaining. You need not concede anything to meet the obligation to bargain in good faith. Absence of counterproposals may be troubling, but standing alone without an act of bad conduct, such as stalling, it would not be an unfair labor practice.

Hypo #18: The walk-out is troubling. However, the United States Supreme Court in a private sector ruling has said that there is no duty "to engage in fruitless marathon discussions at the expense of frank statement...". Giving reasons for your "No" response would be better "table manners", and would help meet your duty to bargain.

Handout for Class 4

(Give out after Class #3)

THE ROLE OF FEDERAL AND STATE LAW WITH RESPECT TO PUBLIC SECTOR LABOR RELATIONS COLLECTIVE BARGAINING, RESOLUTION OF IMPASSES, AND THE RIGHT TO STRIKE

Hypothetical Cases

Hypo #8

You have recognized the Amalgamated Workers' Union as exclusive bergaining representative for your sanitation employees. The president of the union says: "Okay, let's bargain out an agreement." What do you have to do? What does it mean to "bargain in good faith"?

Hypo #9

The Amalgamated's bargaining representatives present you with a "laundry list" of questions over which they want to bargain. What subjects must you bargain about? Are there any you can refuse to bargain about?

Hypo #10

Although you and the Amalgamated have been bargaining in good faith, you appear to be making little headway. What do you do now? What mechanisms do you think would be helpful to hasten agreement?

Hypo #11

Bargaining between you and the Amalgamated has totally broken down and the Amalgamated has called a strike! Can they do that? (Whether they can or not, they certainly have. The garbage is starting to pile up!) Now, what do you do?

Hypo #12

The Amalgamated's representative comes in to you and demands that bargaining begin immediately over a collective bargaining agreement, now that they are the recognized exclusive bargaining representative. You refuse to set a date upon which to negotiate because a member of your bargaining team is ill.

Is the refusal to set a date to commence bargaining bad-faith bargaining? Is the illness of one member of the bargaining team a justification for management's action? What if the union refuses to set a date because one member of the team is "unavailable"?

Hypo #13

Bargaining with the Amalgamated has proceeded through a number of sessions with tentative agreement reached on certain non-monetary matters. You decide that your team is not being sufficiently "stern". You hire an outside attorney to come in and head the bargaining group.

The attorney tells the Amalgamated that matters previously agreed to will now be renegotiated as part of a new package. Is this bad-faith bargaining? If it is, does this mean that previous tentative agreements on specific proposals can never be modified during the course of negotiations?

Hypo #14

During negotiations the parties have discussed the question of accumulation of unused sick leave. But they have been unable to reach agreement. You know that this matter is important to the sanitation workers. You decide to put into effect your "generous" offer to the union immediately, leaving open the option that during the course of negotiations (which may drag on for awhile), the parties can reach a different accommodation on the questions. Is this an unfair labor practice? Why, or why not?

Hypo #15

As negotiations drag on, your management group begins to believe that the Amalgamated is demanding things that the sanitation workers really *are not* interested in. Can you inform the sanitation workers, by a leaflet, for example, how the union is representing them? Can you circulate an employee questionnaire to find out what the employees *really* want?

Hypo #16

Shortly after you have recognized the Amalgamated, the union presents you with their "model"contract and asks for a bargaining session to "formally agree to its terms". A session is scheduled at which the Amalgamated's representatives explain the provisions of the contract and give reasons why certain clauses are required.

Your representative asks a number of questions about the meaning and effect of the clauses. After an hour or so, the head of your management group says, "I think we understand your position. We would be pleased to hold another session if there's anything that you think requires further explanation. However, we cannot agree to any of your demands. Unless there is something else to be said, this session is closed." Have you bargained in bad faith?

Hypo #17

Since 1972, your city has recognized the union and has entered into a series of collective barganing agreements covering wages, hours, and terms and conditions of employment. None of the agreements included a union-security provision or a clause for paid time-off to vote. During negotiations over a new agreement, the union proposes a 25¢ wage increase, an agency shop clause and a clause allowing for time-off with pay for voting on election day.

In support of these demands, the union cites figures showing that these provisions are common in the public sector and that the wage increase is much lower than wage increases given this year in comparable private and public sectors.

Your management team rejects all three proposals, giving extensive arguments in support of your position. The union then modifies its proposals, dropping the wage increase to 20¢, changing the agency shop clause to a maintenance-of-membership clause, and asking for half pay for the time-off for voting. Your bargainers stand pat. The union then says, "Why don't you give us some counterproposal on our clauses?" Your bargainers refuse. Is this bargaining in good faith.

Hypo #18

You have reached agreement with the Amalgamated except for one clause. The union demands some form of union-security clause. The head of your bargaining team says "No". When the union continues to press on the matter, your bargaining team walks out. When the session reconvenes and the matter is brought up again, your team walks out again. Is this good-faith bargaining?

INSTRUCTOR'S
MANUAL

THE BARGAINING PROCESS: STRATEGY AND TACTICS

Prepared by
John E. Drotning

Module Number Four
of
LABOR RELATIONS FOR
MANAGERS OF SMALL
AND MEDIUM-SIZED CITIES
Package VIII

Developed by

SCHOOL OF MANAGEMENT
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MODULE IV

THE BARGAINING PROCESS:

STRATEGY AND TACTICS

The aim of this module is to provide background information relevant to the development of collective bargaining strategy and tactics. The module is designed to cover three classes of three hours each. Class 1 deals with determination of the appropriate bargaining unit and the impact of the bargaining unit on the municipality's personnel and bargaining practices. Classes 2 and 3 cover some bargaining theory and its application. More specifically, a behavioral theory of bargaining is presented first, followed by a discussion of the specific steps to be taken when bargaining (Class 2). The presentation then considers how to apply the theory when developing particular bargaining strategies and tactics (Class 3).

NOTE: Module III, Classes 2, 3, and 4 are adaptations of materials contained in Carl M. Stevens, Strategy and Collective Bargaining Negotiation. (New York: McGraw-Hill Book Co., Inc.) 1963.

MODULE IV - CLASS 1

THE APPROPRIATE BARGAINING UNIT

Objective

- to understand the meaning and significance of the bargaining unit and how it affects bargaining power, decision-making, and employer's personnel practices

Class 1 of Module IV is a 3-hour class with half devoted to lecture and half for class discussion. The instructor might want to look at Lloyd Reynolds, Labor Economics and Labor Relations, 6th Edition, Chapter 18.

The second half of this class involves a class discussion of Handout V-1 and Handout V-2. The idea is to capitalize on a small number of "interesting" exercises that are developed by Handout V-1. Moreover, the instructor should make an effort to focus on bargaining-unit problems so that this discussion supplements the lecture. Also, see instructor's note.

Instructor's Note

Handout V-1 should be distributed at the end of the previous class. It contains brief questions about organizing and unit-determination in each participant's municipality. The idea is to get the public managers thinking about problems which you will discuss in the lecture portion of lesson V. The students should be able to provide information like that contained in Exhibit #1.

At the end of the lecture, it would be useful to find out which students have had specific experience with unit-determination problems. Then break the class into small groups making sure each group has one experienced person. Each group should be asked to discuss today's lesson and to work up one case study and to develop questions which have not been discussed by the instructor or the small-group leader.

Handout V-2, which is also in the student's manual, might contain information useful to the instructor in forming the groups. This should also be handed out at the end of the previous class. If the group appears to be developing a particularly interesting case, it should be worked up and distributed to the class.

It is recommended that the instructor look at the Public Employee Relations Library No. 43 and 51. In addition, any introductory text in labor relations will have a chapter on the bargaining unit.

MODULE IV - CLASS 1

OUTLINE OF THE APPROPRIATE BARGAINING UNIT

I) Introduction

- importance of unit

II) Definition of Unit

- impact of unit on bargaining relationship
- meanings of appropriate bargaining unit
    - people related
    - homogeneity of
    - problems with heterogeneous units
    - some comments on state practices
    - the informal unit
    - the unit of impact

III) A Discussion of Reality

- fundamental criteria in determining the unit
- some examples
- the unique character of local government and its effect on unit determination

IV) Impact of the Bargaining Unit

- on employer's personnel practices
- on decision-making
- consideration of questions on the economic impact of collective bargaining
- the need for professionalism at the table

V) Conclusions

VI) Note to Instructor

Module IV - Class 1

The Appropriate Bargaining Unit

I) Introduction

Collective bargaining has a significant impact on state and local government. Obviously, some view unionism with concern while others may see collective bargaining as a way to improve employee relations and the operations of local government. However, today most bars to public-employee unionism are gone and, while many states have no laws encouraging collective bargaining, they have removed inhibitory legislation, if any existed.

II) Definition of Unit

The question of unit-determination is critical for it influences the quality of the bargaining relationship between the employer and moreover, the phrase 'appropriate bargaining unit' may have a number of meanings. At times, it seems to be somewhat ephemeral and at other times it is clearly defined to all. A bargaining unit is a grouping of people in jobs who then select someone or some organization to bargain on their behalf with their employer. The jobs in this unit are usually similar, but in some cases the persons in the designated unit may hold jobs which are dissimilar. However, it is reason to conclude that an appropriate bargaining unit ought not to be heterogeneous because it would make bargaining difficult, if not impossible. Consider, for example, a unit including maintenance personnel and university professors. Obviously, the two groups may have totally different needs and it would not only be difficult for the union to formulate a unified front, it would also be hard for the employer to respond to this bifurcated unit.

States with collective-bargaining laws generally have bargaining-unit rules spelled out along with elections and procedures to establish an appropriate unit. However, in states without laws, it's not uncommon to have multiple unions representing common workers. This leads to inter-union problems as well as employer-employee difficulties. This combination of problems can have a large and negative effect on the operations of government.

Given the formal definition of the unit, one then must consider the informal unit. That is to say, one must identify the source of the union demands. It may or may not represent the whole unit even though the results of the bargaining will apply unit wide. In addition, one must think about the unit applications of a settlement. For example, suppose there is a written or informal relationship between the salaries of exempt personnel (office heads) and jobs in the unit. Then, clearly, the results of the negotiations also bear on these exempt jobs.

Thus, the essential ingredient in determining an appropriate bargaining unit is a commonality of interests among those in the unit. Other criteria sometimes used are similar working conditions, the employees' interests, effects of fragmentation, principle of efficient administration of government, and geographic location.

III) A Discussion of Reality

Of paramount importance in the public sector is the efficient administration of government. State government is unlikely to allow the proliferation of bargaining units based on geography. For example, in New York State all faculty of the State University of New York are in one unit even though there is a wide difference in salary and work load or job description between a highly paid research-oriented professor at one of the University centers and a faculty member at an agricultural and technical institute. However, in this case, it would be totally inefficient to require the State to bargain separately with every campus. Another example might be the clerical staff of state agencies. In Ohio the staff of these agencies will be located in Columbus as well as throughout the rest of the state. Again, it may make sense to put all these clerical persons in one large state unit. In this way, the Governor's office of labor relations is able to deal with a finite number of bargaining agents. Another reason for structuring the largest reasonable unit is that employment policies may be consistent for the group. Therefore, it makes little sense to create a situation which could result in different wage, hours, and conditions of work for similar state employees.

One must be aware that while this notion of one large unit may apply to state employees, it is not appropriate for local government or school districts. These municipalities and school districts raise their own funds which may be supplemented by state and federal monies, but they are essentially run on the basis of local taxes. Since tax rates and the ability to pay vary tremendously in any state, it is not likely that one can hope for coordinated employee bargaining. Each municipality is likely to have multiple bargaining units like police, firefighters, water, highway, maintenance, and, perhaps, clerical workers. A neighboring town may have an identical work staff, but it will also man its own units. Multi-employer bargaining units are not likely to work out in the public sector, and they are usually not sought by the public sector union like AFSCME, SEIU, and CSEA.

There are various kinds of bargaining structures in the United States, and it makes sense to identify a few of the more prevalent models.

1) Plant-by-plant bargaining in multi-plant firms; a company may have multiple non-integrated plants producing similar products. If each plant bargains with a different union and there is no collusion, management is in a relatively strong position.

2) Small-plant bargaining with a large national union. The international union can provide economic support to the local. It can utilize other agreements to coerce the small employer and it is safe to say that this is a weak position for management. This could force corporate-wide bargaining, an attempt by the employer to offset union whipsawing.

3) Single employer with numerous small unions. This is eventually the public sector model if one eliminates state employees. Local government and school districts are locally financed. In this case a single employer bargains with numerous unions. Such situations create difficulty among the unions, such as parity for police and fire.

4) Multi-employer bargaining in local product markets. If the market is organized, it is possible that the employer will form a regional association to bargain as one. This model is unstable since the employees vary in efficiency and profitability and some may concede sooner than others. In the public sector, there have been experiments in regional bargaining among school districts, but they have not been very successful for the same reason indicated earlier.

Bargaining structure has tended to develop in such a way as to concentrate power rather than diffuse it. The size and scope of the unit have increased over time.

Issues have been displaced upward and there has been a tendency to centralize union decision-making. However, there are some limits on this movement because unions like autonomy. Moreover, in the post-WW II period, there has been a substantial change in the geographic distribution of American industry--from the Northeast and northern Mid-west to the South, and this migration has reduced centralization of union power.

It is generally accepted that the national policy ought to preserve free collective bargaining. To this end, federal and state policy ought to attempt to promote bargaining structures while 1) minimizing the social and economic cost of labor conflict, and 2) making the bargaining unit coexist with the area of impact. Federal and state law makers have attempted to implement their policies without resorting to compulsory arbitration on one hand or antitrust action on the other.

IV) Impact of the Bargaining Unit

The fact of collective bargaining means the employer must put his house in order. It forces him to take a hard look at the personnel function. Do the personnel policies of the town or city meet the needs of the employees? Do public managers know the employees' needs? It will force public managers to be systematic and thoughtful about recruiting, selecting, training, and promoting people. Thus, in this sense, the challenge of unionism is positive, for a sloppy system will beget grievances galore and the upshot will be inefficient administration.

Collective bargaining forces decision-making, for one's decision may last much longer than might be the case without a union. In the private sector, top management may look at a petition for union elections as a slip-up on the part of the local plant manager. That is to say, if employees are so dissatisfied as to seek out a union's help, then the plant manager might not be paying attention to his employees' needs. Such an observation may not be as true in the public sector. Once a state passes legislation, local towns and cities which are linked to the state government may simply accept unionism without any attempts to block union organizing efforts. But whatever the perceptions of management, it is clear that unions will require management to devote serious attention to labor relations problems and issues.

While the noneconomic side of collective bargaining has been stressed in this lesson, it is also important to consider the economic effect of unionism. Will the unions create gaps between organized and unorganized communities? How will wages and fringes be affected? Will the unions put undue pressures on public managers to increase tax rates? How will management go about acquiring data so that it can match the union's arguments? Knowledge is power at the bargaining table and there is no substitute for fiscal sophistication when facing a union.

This lesson does not answer all the questions raised, but it is important that public managers consider these questions. It is especially important to think about the economic impact of unions before one decides that they are the cause of rising tax rates.

There is little doubt that collective bargaining will require professional expertise on the part of public managers. The risk is that the municipalities do not take this function seriously and wake up to find that the amateur has given the store away. It is also important to know that skilled union negotiators prefer to deal with professional management negotiators. A union negotiator may be able to "rip off" a town or municipality once, but then what's left for him to get in succeeding years?

V) Conclusion

This lesson has concerned itself with a discussion of the bargaining unit. The unit's definition has a great deal of influence on the character of the labor-management relations that will develop in the years following its determination.

The point that must be emphasized is that the public manager cannot take a passive stance with respect to determination of the unit. The manager must consider the consequences of one unit over another in terms of its impact on the workings of local government. The manager must consider alternatives and be prepared to press actively for units consistent with the goal of government, which is to serve the people in its jurisdiction.

Handout V-1

Answer the following questions as well as you can:

1. How many employees does your municipality employ?

2. List all the jobs and then group them in some fashion that makes sense to you. State the criteria you have selected for the grouping. That is, did you do it by department, by function, by skill, etc.?

3. What jobs, if any, are now unionized?

4. a) If you are unorganized, what would be the most sensible bargaining unit(s) to have in your town or agency?

   b) What are the reasons used in answering 4(a)?

5. a) Who should handle the industrial relations function in your municipality?

   b) Why?

Exhibit #1

Service	
Protection	Firefighters Police Sheriff units
Sanitation	Garbage Collectors Drivers, etc.
Health Care	Public hospital & nursing home employees nurses & aides, custodians Public Health nurses
Education	Teachers, aides, bus drivers, custodians, secretaries
Recreation & Parks	Carpenters, trades, etc.
Social Welfare	Social welfare case workers, nutritionists, occupational, etc.
Support & Staff	Clerical, office, maintenance

How can such a classification be useful for determining bargaining units?

Get class to discuss the Handout questions - on basis of the above.

Handout V-2

Municipality ____

Size - Population ____________________

Area ____________________

Location ____

Type of Community ______________________________

____

Past History of Employer-Employee Relations:

Description of experience of case study.

Which employees involved?
How organizing effort initiated?
Municipality's response.
Who handled?
How handled?
Was election held or union recognized without election?

Were legal services used?
  Own legal staff or outside firm?
  Basis for hire?
  Reputation?

Were outside consultants used?
How useful was outside help?

MODULE IV - CLASS 2

COLLECTIVE BARGAINING: THEORY AND APPLICATION

Objectives

- to put bargaining in a theoretical framework
- to discuss bargaining strategies and tactics
- to discuss a case and to relate theory to the real world

Instructor's Note

The session is again divided into two parts: the first part lecture, and the second part a discussion of a case. The idea is to give the students an understanding of the behavioral framework for bargaining. Bargaining is not a poker game, nor is it the unabashed application of power. The lecture may be short because the students will probably gain more from the discussion than from the lecture.

The case should be handed out at the end of the previous class.

This lesson can be amplified, if desired, by use of:

Carl M. Stevens, Strategy and Collective Bargaining Negotiation. (New York: McGraw-Hill Book Co., Inc.) 1963.

Alan Coddington, Theories of the Bargaining Process, Aldine Publishing Co.) 1968.

Bargaining: Formal Theories of Negotiation, edited by Oran R. Young (Urbana: University of Illinois Press) 1975.

At the end of the lecture, the class should discuss the Willoughby Hills case which should have been handed out at the end of Class 1, Module IV. There is a list of questions at the end of the case which can be used for the discussion portion of Class 2, Module IV.

MODULE IV - CLASS 2

OUTLINE

I) Introduction

- some comments on prior research on bargaining

II) Behavioral Concepts

- goal drives - approach and avoidance curve
- stable and unstable situations
- why bargain in face of conflict
- a discussion of negative goals in a bargaining environment

III) Bargaining Sequence

- NUTS AND BOLTS of bargaining
- procedure - Who goes first
- content of issues
- economic demands
- role of time in negotiation

IV) Conclusion

MODULE IV - CLASS 2

Collective Bargaining Theory and Application

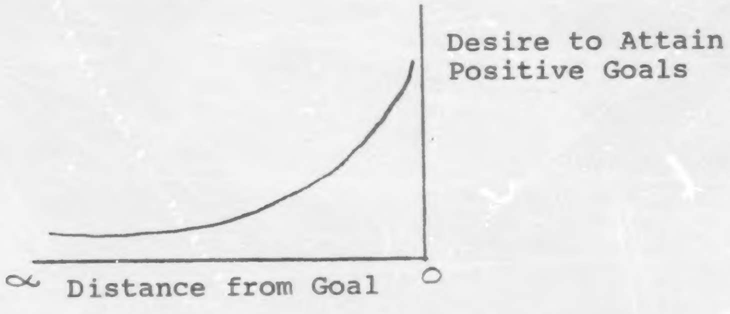
I) Introduction

Collective bargaining is, as we noted earlier, a way in which the conflicting goals of two parties are resolved. The bargaining process has been discussed by behavioral scientists as well as economists. The former have recruited subjects to simulate real bargaining, whereas the latter have developed elaborate mathematical models to describe the process of bargaining. Industrial relation scholars, for the most part, have not spent a great deal of time on developing theories of bargaining. A major problem in bargaining is that to study it adequately one must utilize economics and the behavioral sciences and such a task presents a formidable challenge.

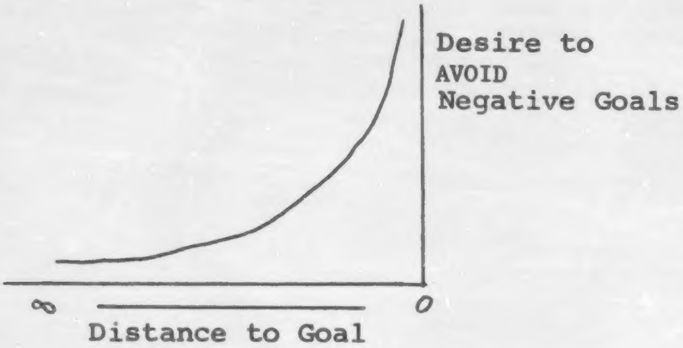
However, this lesson attempts to provide some concepts which are useful in understanding the bargaining process.

II) Behavioral Concepts

The first concept is from the field of clinical psychology and focuses on the strength of learned responses to positive and negative goals. It is posited that as people get closer to attaining a positive goal, the drive or intensity with which this goal is pursued increases. This can be illustrated as follows:



It is also posited that a similar curve exists relating the drive to AVOID a negative goal and the distance from the goal. That is, the reasoning is that distant goals (for example, a strike threat 90 days prior to the expiration of the contract) are not as worrisome as a strike threat on the eve of the contract deadline. This also can be illustrated as follows:



One can also look at the degree of stability in various situations if one is confronted by two positive goals and is equidistant from attaining each. It takes only a slight nudge in the direction of one to have the individual move toward that goal. The initial ambivalence is then removed and one seeks out the closer goal. If both goals are negative, then a nudge in the direction of one will increase one's desire to AVOID, so one returns to the initial stable position which is to stay away from both.

The concept most useful for bargaining is that dealing with negative goals. In a bargaining situation, it can be postulated that the goal of the union is to settle on the terms it initially proposes and the goal of the employer is to settle on the status quo. The union desire to AVOID settling on its own terms increases as it continues to insist on this position because it increases the possibility of no agreement and a consequent strike. At the same time, an employer who insists on no changes in the contract increases the subjective probability of a strike and, therefore, the employer's desire to AVOID this position increases over time.

One might ask why there is any inducement to settle in such a situation. Suppose, for example, a union puts its position before management on a take it or leave it basis. The employer can: 1) accept the union's demand, or 2) reject and take a strike. Both alternatives are unacceptable to the employer, and one would expect the employer, in such a situation, not to make any decision. This kind of immobility on the employer's part often occurs when the initial demands are unreasonably high in the employer's view. In a sense, the employer says to himself, "I have n moves of finite amounts and given the union's position I have insufficient time and money to result in a solution." Consequently, he sits and waits, hoping that the union's desire to AVOID a strike will result in a more realistic demand by the union. In doing so, the employer has opted for a third alternative, namely, that of compromise. The employer was initially put in an economic dilemma and he opts to try for a third alternative.

III) The Bargaining Sequence

This situation describes one behavioral concept useful for understanding the dynamics of the bargaining process. At the same time, it is also necessary to understand some of the "nuts and bolts" of bargaining and to these we now turn.

Normally, the union will present its demands to the employer and await a response. This is true whether it is an established relationship or a new one. The employer, then, reviews the demands and responds to them as well as putting in some of his own. It is not necessary for the employer to always play a passive role. He may exchange, at the initial meetings, some of his own noneconomic items. For example, it is important that management know what rights it must have in order to provide services to the people. Once both sides have exchanged proposals, they are both aware of the total picture. The next step for both sides is to develop priorities for each issue and to think about putting packages together. Normally, the economic demands are held in reserve on the grounds that to open with them might put an insurmountable obstacle on the table before each side has felt each other out. That is, the demand or offer may produce immediate rigidity and hamper the compromise mentality so necessary to resolve the impasse. The idea is to start with successful items to produce an environment conducive to give and take between the parties and so increase the probability of resolving the more difficult issues.

The role of time is critical in negotiations. Time, as indicated earlier, is a kind of proxy means of pressure. The closer to contract expiration one is, the more pressure there is to AVOID an impasse and perhaps a work stoppage. However, it is important that the parties have narrowed the range of issues as the deadline approaches. If the parties have a large number of items still on the table, it becomes next to impossible to consider them in a package. What happens is that the bargainers are forced to deal with them individually and little, if any, progress is made. Moreover, such a situation could produce an impasse which could and should have been avoided.

The quality of bargaining in the final hour is much different than in the opening talks. The amount of tension increases and the desire to AVOID impasse produces compromises which allow the parties to make subjective estimates of the final settlement. A demand or offer is designed to inform the recipient of where one wants to go and, at the same time, stimulates an indicative response from the recipient.

The final phases of bargaining usually involve packages of issues which can be manipulated by both sides. Remember, at this point, a demand or offer is telling the opponent the conditions under which one will strike or take a strike. This is no time for irresponsible moves.

Conclusion

This lesson discussed a behavioral concept useful in understanding some of the forces producing the compromise mentality so necessary for settlement. It goes on to discuss the actual bargaining sequence and the role of time in the bargaining process.

D. Willoughby Hills, Ohio: Mayorality Politics and Labor Relations (as described by the Mayor)

I. Background.

Willoughby Hills is a suburban Cleveland, bedroom community with an area of about twelve square miles. Population in 1976 stood at 8,200 - approximately twice that of 1966. An interstate highway, followed by high-rise apartments at the interchanges, caused the sudden growth. There are ninteen full-time employees, eight in Service, nine Police, and two Fire Fighters. Police and Fire departments are supported by part-time members who--although called volunteers--are paid for performing standby duties.

Willoughby Hills is a Charter City. Books are kept on a cash basis. There are no encumbered balances. The Mayor--whose term is four years--acts as Safety and Service Director. He is in daily contact with most of the city employees. Historically, the Mayor--with the help of the Finance Director--handled all labor relations.

II. Early Turmoil

Throughout ten years of rapid growth, many residents have become annoyed by the traffic increases and the creeping commercialism. They held the incumbent Mayor and his administration responsible. A loosely-formed group--which emerged under a no-growth stand--and took control of City Council in 1974. The new majority was at immediate odds with the incumbent mayor. In the Spring of 1974, the Mayor reached an impasse with Council and resigned. The Council President became Mayor. Immediately he was challenged by each city department with requests for wage increases and expansions. Most of the employees were given some increase. Expansion, however, occurred only in the Fire Department with the introduction of a rather unique service -- Paramedics.

The Fire Chief had developed a Paramedic Training Program within the Willoughby Hills Volunteer Firemen's Association (WHVFA). He immediately staffed the Fire Station with two men on twenty-four hour standby at $3.00 per man-hour. TV channels featured the Willoughby Hills Paramedics in action, to the great pride of many city residents.

In June, 1974, the Finance Director cautioned both the Mayor and Council that this expansion had not been budgeted and that it would result in serious financial problems. The warning was ignored because resources had been under-estimated in previous years. The new Mayor, apparently, expected this would happen in 1974. Fortunately, near the close of 1974 a substantial inheritance tax was received. This, along with a reduction in normal cash balances, permitted the City to end 1974 with a surplus.

There was growing hostility between the Finance Director and the Mayor. Wage increases of eight percent in 1974 and 1975 had contributed to the financial problems. Since the Finance Director had been appointed by the former Mayor, his successor became suspicious that funds were being hidden. Council's majority stood behind the Mayor. By mid-summer the dispute was carried to the public through the newspapers.

III. The 1975 Elections.

With Fall elections approaching, opponents of the incumbent mayor suggested as a possible candidate for Mayor a local businessman who had had no political experience. Supporters of the Mayor who had resigned lined up behind the businessman. The WHVFA enthusiastically campaigned for the incumbent. Emotions ran high, with the budget and the Fire Department Paramedics the primary issues. In September, the Fire Department members donated spare time to help the incumbent. Each ambulance run provided a public-relations opportunity and was followed by telephone suggestion that a vote for the incumbent would be appreciated. The incumbent contended that funds which had been hidden by the Finance Director would appear after the election. He asked for an audit by the State Examiners covering 1973, 1974, and 1975.

The roofing contractor and his supporting councilmen were elected in November with 59% of the vote. As promised, the new Mayor appointed a Blue-Ribbon Investigative Committee to study the city's finances and services. The three-person group--a local businessman, a Certified Public Accountant from the private sector, and the Finance Director of a nearby city--promised a report by the first council meeting. In the meantime, many supporters of the incoming Mayor demanded that personnel in the Fire Department be reduced in January 1976.

IV. The New Administration Takes Office.

Willoughby Hills ended the 1975 year with a General Fund cash balance of $238. There was a total depletion of inventories and invoices totaling $50,000 from suppliers who had been instructed to hold back the bills until January. Road-servicing salt had to be borrowed from the State of Ohio during the heavy snows of January 2. Each of the City's three police cars had operated for over 100,000 miles and maintenance costs were very high. Councilmanic bonds issued in 1975 had reduced the Certificate of Resources in the General Fund from $505,000.00 in 1975 to $459,000.00 in 1976. Consequently, man-power cuts were made in all departments. On occasions, police protection was reduced to one person.

Whatever their distrust of the new administration, members of WHVFA continued to cover their shifts. The Fire Chief and the new Mayor agreed to let bygones be bygones. They sought solutions to common problems. For some time, the Fire Department had believed that its payments should be made from the General Fund, not from the Fire Levy. Funds from the levy were to end in December 1976. The Mayor agreed to set this as a goal of his administration. The Chief, in turn, persuaded his men to "voluntarily" contribute one-third of their standby wages ($3.00 per hour reduced to $2.00 per hour), until funds were available, providing no other city employees were given raises. This "voluntary" aspect was emphasized because the Fire Fighters feared that a written ordinance would lock them into the lower rate.

At his first meeting with Council, the Mayor reported on his agreement with the Fire Chief. Quickly, the Law Director advised that this should be put into an ordinance so as to avoid possible complications under Ohio wage and hour laws. Two holders from the old administration strongly objected. They insisted that no reductions in standby wages would be made until the State Examiner's Report had been received. They repeatedly maintained that funds were being concealed. Nevertheless, the wage reduction was put into ordinance form.

The Blue-Ribbon Committee's report was also presented. It indicated that, indeed, there were financial problems. They recommended a 50% reduction of the credit on income taxes paid to other communities (Willoughby Hills had an income tax of 1% but allowed up to 100% credit for taxes paid to other communities). Council, with the two holdovers dissenting, adopted the recommendation. A decision about continuing the Fire Levy which would sustain the Paramedic Standbys was deferred.

After the first council meeting, a December memo issued by the former Mayor was produced. It indicated that the pay rate of a particular Police Dispatcher was to be increased from $3.00 to $3.25 per hour, effective January 1, 1976. This had been a pre-condition of her employment when she was hired away from another city by the Mayor in September, 1975. Other dispatchers--who had longer service, of course--were currently working for $2.90 and $3.15 per hour. The new Mayor realized that this increase would break the agreement with the WHVFA and could set off a chain reaction. None the less, he persuaded the other dispatchers to hold the line until an income tax credit reduction could be passed. At the next Council meeting, he endorsed the 25 cent increase for the new Dispatcher.

Legislation was prepared to reduce the income tax credit. Many heated arguments ensued. The former Mayor frequently spoke in the public portion of Council Meetings and insisted that no additional revenue was necessary unless confirmed by the State Examiners, who continued to work on the city's books. His statements were echoed by his two Councilmen. Council Meetings frequently lasted until 1:00 A.M. City employees seldom attended Council Meetings, but they carefully examined every word in newsprint. The controversary made interesting reading--to the chagrin of most of the city officials--and the newspaper reporters had a field day.

During the Spring of 1976, the Mayor negotiated a contract to provide Fire/Paramedic Service to the neighboring Village of Waite Hill. This generated $9000.00 per year income to Willoughby Hills. A Charter Amendment to increase the City Income Tax from one percent to one and one-half percent was placed on the ballot.

One of the dissenting Councilmen began holding Town Meetings to generate opposition to the proposed tax increase. He demanded the resignation of the Finance Director and suggested the recall of the Mayor. At one time he had been a candidate for the office of Mayor but had withdrawn in order to support the incumbent.

In the June Primary, the tax issue was approved by less than 25 votes out of approximately 3000 cast. The wording on the ballot was somewhat confusing, so the dissenter continued his attacks.

V. Spring Labor Negotiations.

Like most neighboring communities, Willoughby Hills traditionally negotiated with employee groups in the late spring and early summer. Agreements had been made retroactive to April 1. The Police Department--whose actions had been held in abeyance until after the election--immediately presented their demands for increased wages and fringes. It was uncharacteristic of the police in the area to conduct a strike. Nevertheless, several neighboring communities faced bargaining pressure when their police forces wrote all traffic tickets under the State Code. Their actions, in effect, gave the fine to the State rather than the City. Thus, the police impressed the Mayor with their potential for influencing the size of city revenues. Normally, the Willoughby Hills Mayor's Court typically generated 15 to 20% of the city's General Funds.

Because the Finance Director had become such a controversial figure, he was replaced on the Mayor's negotiating team by a Councilman. Several members of the police department negotiated for the employees. The police demands were: (a) straight time wage increases of 8.9%, one additional paid holiday, (c) false arrest insurance, (d) dental plan, and (e) uniform allowance increase.

The lack of current, and the prospect for future, funds clearly dictated the City's position. Most additional funds anticipated from the recently approved tax would be used in erasing deficits in the current year. Any current or retroactive increases granted would have to be passed on to all departments including the WHVFA. The current budget was dependent on Mayor's Court revenues. The city could not afford to have them interrupted. Political opponents would be seeking an opportunity to embarrass the administration.

The City's opening statement was that the financial problem was here. Consequently, there could be no retroactive adjustments. This was quickly agreed to. It later proved to be a valuable advantage. The previous sacrifices of the WHVFA helped achieve this objective.

Any concession made to the Police would have to be extended to all city departments. Yet, the negotiating committee for the Police Department would not be able to return empty-handed. The final agreement granted one additional paid holiday and a uniform allowance increase of $100.00 per year. Since the Fire Department consisted of only two full-time employees (the chief and one other), this benefit was extended to them. The thirty volunteer members would receive nothing. Office staff, dispatchers, and the road-department employees would receive only the extra holiday. The total cost of this package to the City was estimated at $1500.00 for the year 1976. Negotiations would be resumed in October.

The Ohio Sunshine Law required that Legislative bodies meet only in Public. Exceptions were permitted for special purposes, such as the discussion of wage negotiations. Consequently, an Executive Session of Council was called to explain the results of the current round of negotiations. The Administration critics were in attendance and asked many questions, but they withheld making any objections.

Ordinances were presented at the next regular session of Council. One of the critics accused the Mayor for neglecting the Fire Department and for recklessly giving raises when the City was supposedly broke. The scenario made newspaper headlines.

Within a few days of the meeting the WHVFA presented a list of demands. Based on income from the Waite Hill contract, and on increases granted to other departments, they wanted immediate restoration of the $3.00 per hour standby rate. Several sessions with the WHVFA committee were followed by a meeting with the full association. The members most critical of the City's actions were the older men in the organization. They felt that the Fire Department was a stepchild of the City, because it was not included in the City's General Fund. The Mayor concluded that this was primarily a matter of pride caused by the lack of appreciation for their many years of service. Nevertheless, a counter-offer was presented by the City to set standby pay at $2.50 per hour, with further assurances that the Fire Department would be financed from the General Fund in future years. When this offer was rejected at 11:30 P.M., City negotiators left the meeting. An hour later, the Mayor was called by spokesmen for the WHVFA who advised that the committee agreed to resubmit the offer to the membership. Subsequently, it was approved by the entire association.

VI. The Recall Drive.

The City Charter provided that after six months of service any Willoughby Hills elected official could be recalled with the presentation to the Clerk of Council of petitions bearing the signatures of twenty-five percent of those who voted in the last election. Such a recall required either a resignation by the official within five days or an immediate run for re-election. Should the officer be recalled, a majority of the remaining councilmen would then decide upon a replacement.

Early in August, 1976, a coalition of new residents and supporters of the former administration began circulating recall petitions on the Mayor and the five supporting Councilmen. Only the two regular dissenters were not included in the recall. Primary charges were financial irresponsibility and the support of an unneeded income tax. Flyers, charging financial irresponsibility and suggesting that there were $300,000 of hidden assets, were distributed throughout the community. The WHVFA remained silent throughout the campaign. Midway through the drive the State Examiner's report was released, confirming the Finance Director's figures as accurate.

The petitions were presented to the Clerk of Council in September. He rejected them on legal grounds. The circulators sought a Writ of Mandamus in the Ohio Supreme Court. A Summary Judgement was granted in favor of the Clerk of Council.

VII. Problems with the Press.

During the recall drive and subsequent court proceedings, Willoughby Hills provided many exciting headlines for the local newspapers. The petitioners charged the papers with favoritism over their alleged failure fully to report the recall side of the issues. The City Council and the Mayor decided not to criticize the press even though they felt that there were several misleading stories.

Shortly after the conclusion of the recall drive, it became necessary to allocate new income tax funds to accounts which were running low. This was done at a regular Council Meeting, under continuing criticism by the dissenters.

The next issue of the local newspapers headlined WILLOUGHBY HILLS FINDS $70,000. According to the story, $28,000 was to be given to the Police Department for wages because payroll money had previously been used to buy new cars. No mention was made of the Fire Department. In actuality, $11,000 had been added to the Fire Department standby appropriation. This fact, however, had not been reported in the article. According to Fire Chief, "The roof almost blew off the Fire Station." Members of the WHVFA felt betrayed.

By now the new Mayor had gained a measure of rapport with the reporter. He asked the reporter if he would run a follow-up article and correct the mistaken impressions. The reporter reminded him that headlines are written by specialists and not by reporters. The succeeding article reported appropriation to the Fire Department and properly identified the source of funds as a tax collection. Significantly, the article was headlined WILLOUGHBY HILLS TO END YEAR WITH SURPLUS.

Case Questions:

1. What are the negative goals of the Mayor, the Willoughby Hills Volunteer Firemen's Association (WHVA)?

2. a) What impact did the Council have on the Mayor's Agreement with the WHVA?

   b) What would you advise a new Mayor in this predicament?

3. a) What is your view of the Police demands?

   b) What about the timing of the tactics of the Police?

4. How could the Mayor deal with the issue of, "What the Police get, so will the other units."

5. Do you think administration critics present at negotiations helped or hindered the identification of bargaining goals.

6. What impact did the political efforts of the former Mayor have on this Mayor's ability to deal with the union?

7. In your judgment, does the press help or hinder negotiation? If so, please draw up reasons for your answer.

MODULE IV - CLASS 3 & 4

COLLECTIVE BARGAINING: THEORY AND APPLICATION CONTINUED

Objective

- to develop an understanding of some fundamental strategies and tactics in bargaining

Instructor's Note

The lecture material in Module IV, Class 3 covers a broad range of topics on the bargaining process. The purpose of this material is to provide students with some framework for understanding the bargaining process. To do so, it is suggested that the instructor use this material as a guide and then illustrate some of the concepts by means of examples and cases which come from the experiences of the students. Then, the instructor must simplify and perhaps eliminate some of the lecture material if only 1-1/2 hours are devoted to this lesson.

The second half of Module IV, Class 3 is preparation for a bargaining case which will begin in Class 3 and continue through Module IV, Class 4.

Hornell Case. The case suggested for discussion involves the negotiations between the City of New York and the Hornell Police Association. It is a particularly useful case for a simulated bargaining exercise because it contains 1) problems created by other bargaining units, 2) comparisons across cities, and 3) a set of issues which can be given priorities for negotiation purposes. These issues include retirement, holidays, shift differential, out-of-title pay, off-duty injury, health insurance, and contract duration.

This case is also useful because in addition to Hornell wage and salary data, it contains earlier contracts, a factfinder's report as well as other Hornell collective bargaining contracts which can be utilized by the participants in the negotiation process.

The case may be purchased from Professor David B. Lipsky, School of Industrial and Labor Relations, Cornell University, Ithaca, New York 14850.

The Hornell case requires at least 3 to 4 hours and it could be extended to 6 to 10 hours if sufficient time is available. The participants are given the entire package of materials at the end of Module IV, Class 2, and it should be read before Class 3.

After the break in Module IV, Class 3, the students are allocated into 4- or 5-person union and management teams. Each team should decide on a spokesperson. Once this is done, the instructor may take questions on the case, but he should not allow this to continue long. The students will have questions, just as the real negotiators did, but it is important to move them into bargaining as soon as possible.

The teams should probably caucus for the remainder of this class. The actual bargaining should begin in Module IV, Class 4 and terminate at the end of this period. If time is available and students are willing, the bargaining could continue at the discretion of the instructor.

This exercise requires rooms for each bargaining group and, in addition, some caucus rooms or space should be available. The instructor should also try to have some mediators on hand to help the groups if they are wanted. However, it should be made clear to the participants that any neutral help is at their request, and the mediator can be used, not used, or dismissed at any time.

MODULE IV - CLASS 3 & 4

OUTLINE

I) Application of Avoidance Gradients to Bargaining Process

- tactics
- efficiency of tactics
- classification of tactics

II) An Illustrative Example

III) Power Implications of the Tactics

IV) Strategies: Some Consequences

V) Deadline Bargaining

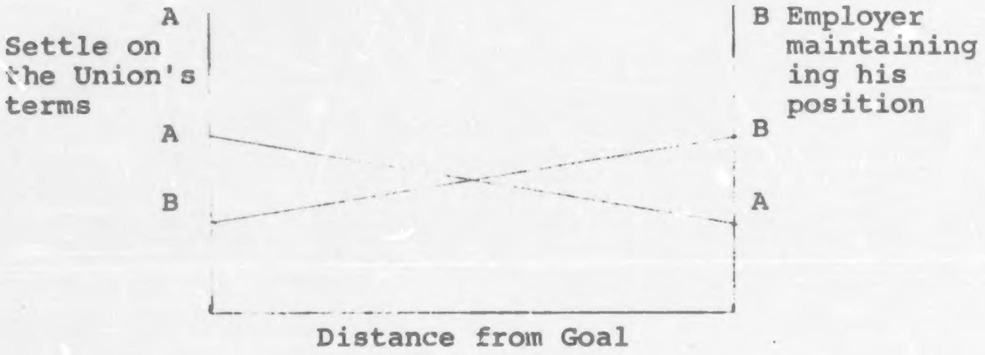
VI) A Comment on Strike Probabilities

VII) The Choice Process in Bargaining

I) Application of Avoidance Gradients to Bargaining Process

A) There have been a number of models developed to describe the process of conflict resolution or bargaining. One useful one was developed by Professor Carl Stevens. It utilizes concepts of AVOIDANCE gradients which were developed in the field of clinical psychology and described earlier.

In the following diagram, there are two goals. First is the desire of the employer to AVOID settling on the union's terms and this is called negative goal A. The second goal the employer wishes to AVOID is insisting on his own position. This is labeled negative goal B. This is a negative goal for the employer because insistence on his own position may cause a strike which the employer wants to AVOID.


A
Settle on the Union's terms
A
B
B Employer maintaining ing his position
B
A
Distance from Goal

Thus, this diagram illustrates that as the employer gets closer to negative goal A, his desire to AVOID it increases. In like manner, the closer the employer is to insisting on a position unacceptable to the union (negative goal B), the more the employer wants to AVOID the goal. Given these conditions, what tasks confront the union?

B) Task for the Union

The union's choice of strategies can be put into two categories.

1) The union may attempt to shift up or increase the employer's desire to AVOID insisting on his own position, again because such insistence may lead to a strike.

or

2) The union may attempt to decrease the employer's desire to AVOID settling on the union's terms.

in other words

1) The first strategy increases the danger to the employer of insisting on his position (goal B).

2) While the second strategy decreases the costs of settling on the union's terms (goal A) as perceived by the employer.

C) Efficiency of Tactics

Both strategies move the employer closer to negative goal A, but a strategy aimed at increasing the subjective probability of a strike leads to increased tension, while a strategy which persuades the employer that the union's demands are not too bad, may decrease tension.

D) Classification of Tactics

A union in negotiating with an employer may do one or all of the following at various points in the negotiations process.

1) Informational
    a) The union may present its own preferences to the employer.
    b) The union may attempt to discover the employer's preferences.
2) Persuasion
    a) The union may attempt to alter the employer's preferences if they are known.
    b) The union may attempt to alter the employer's expectations, if known, or his perceptions about the negotiation environment.
3) Coercion
    a) The union may attempt to alter the employer's expectations about the union's future course of actions.

b) The union may attempt to sway the preferences of "the public" so as to increase the external pressures on the employer to settle on the union's terms.

4) The distinction between persuasion and coercion is that the latter tactic involves the implied or actual use of force in order to achieve compliance. Force or the use of power means that one party forces another party to do what it prefers not to do. In addition, persuasive tactics may have an element of rationality that may not be present in coercive tactics.

5) Coercive Tactics

Coercive tactics may be broken into two classes.

a) Straight-forward Not Bluff

b) Game Theoretic Not Bluff

In a Straight-forward Not Bluff, the union states its true intended actions. In a Game Theoretic Not Bluff, the union asserts that it will do, in a certain situation, something it would manifestly prefer not to do.

II) Discussion

1) The union tactic is communicated to and deciphered by the employer, and his perception of the tactic may be correct or incorrect. Presumably, the union will attempt to correct incorrect perceptions of its tactic on the part of management.

2) A game theoretic not bluff tactic may appear to have little utility, but this is not necessarily so, since the recipient of such a tactic has some desire to avoid risks, and the threatener hopes this risk aversion propensity is sufficient to deter the act.

Example

		Column	
		I	II
Row	i	10 9	9 10
	ii	8 0	0 0

The above is a payoff matrix for two parties, namely Column and Row. Row's payoff is in the lower left hand, and Column's is in the upper right hand portion of each cell. In the exercise the following assumptions are:

1) payoffs known to each side

2) each side is a maximizer

The Moves

1) Column chooses I and Row selects i and the payoff is 10 and 9 respectively.

2) However, if Row can mount an effective threat, which leads Column to believe Row will choose ii , if Column elects I, then Column would elect II and Row i , so the payoff is 9 to Column and 10 to Row.

This amounts to a successful game theoretic not bluff for Row, since it is obvious that he would prefer not to choose ii in the event Column selects I. If we allow Row's payoff in cell ii I to rise to 7 or 8, then Row's threat to elect this cell is more akin to a straight-forward not bluff in that the increased payoff allows a true intended action.

III) Power Implications of the Tactics

A straight-forward not bluff tactic allows the inference that the user has inherent bargaining strength. Thus, a large war chest for strikes, or the timing of a strike may clearly provide the union with inherent power. On the other hand, a game theoretic not bluff requires negotiating skills and credibility whereas the former bluff requires commitment. The role of credibility is critical because it affords discretion whereas commitment may rigidify the bargaining process and effectively block successive moves which may lead to a successful resolution of a dispute.

The collective bargaining process is not like a chess game in which A moves, then B, then A....etc. One side may make multiple moves or both sides may move in simultaneous fashion.

The consequences of these two broad strategies are listed below:

IV)

Strategy I	Strategy II
Increase Employer's desire to avoid his own position	Union decreases Employer's unwillingness to settle on union's terms
Increase cost of disagreement	Union tries to decrease apparent cost of agreement
Increase tension	Decrease tension
Invokes threats	Involves promises of cooperative activity
Suggests bargaining power or power to withhold to limit alternatives to opposition	Suggests bargaining power or power to extend or increase the alternatives to the opposition

V) Some Comments on Deadline Bargaining

For parties in collective negotiation to agree, there must be identical equilibrium points (a necessary condition) and the parties must be aware of the point of agreement (sufficient condition).

The following figure shows the State of Mind of the parties and various positions.

STATE OF MIND

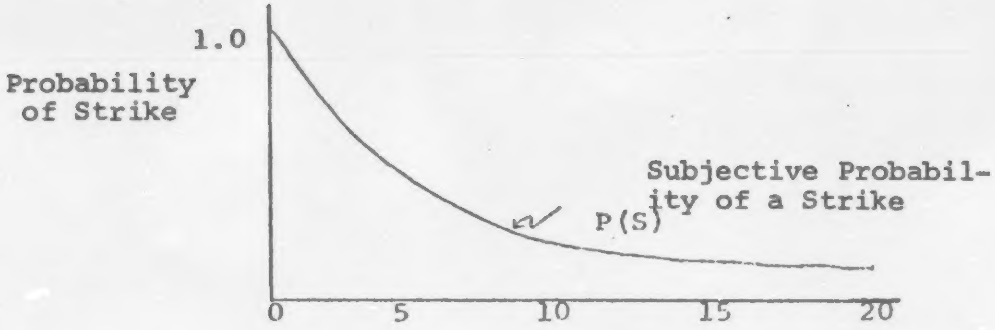
Announced	1	2	3	4
Mgmt's. Position	5.00	5.00	5.00	5.00
Mgt. Eq. Position	5.05	5.12	5.05	5.15
Union Eq. Position	5.20	5.12	5.12	5.10
Union's Announced Position	5.25	5.25	5.25	5.25

Suppose the parties were in State of Mind 2 and the union announces 5.12 after first announcing 5.25. Management may view this as a weakness and move to State of Mind 3, especially if the union's move was early in the bargain-process, that is, long before the contract-expiration date. This could lead to divergence rather than convergence. State of Mind 4 is a situation where there is overlap in terms of equilibrium points with management willing to go to 5.15 and the union willing to accept 5.10. The winner in this situation is the one who waits and lets the other opponent announce its equilibrium point. This party does so, because it must state the terms under which it is willing to take or initiate a strike. For example, the union, at deadline, states 5.10, because it would prefer to settle at 5.10 than to strike. By waiting, management saves .05. The converse, of course, is also true.

VI) Strike Probabilities

The actual probability of a strike before a contract expires is 0.0. At the end of the contract, the probability is 1.0 if there is no agreement. However, parties to a negotiation process do not view it this way. It is the subjective probability of a strike that is important to them and tends to increase as the contract deadline approaches and there is no settlement.

The following figure shows this.



In a sense, the subjective probability of a strike is reality for the parties even though it is statistically incorrect. At the end of the contract the parties must announce their least favorable position or take a strike.

In the public sector, the power of a contract expiration date is less than is the case in the private sector simply because in many cases, bargaining continues after the deadline. However, this lengthens the negotiations process and reduces the stimulus for the parties to make their equilibrium position known.

VII) The Bargaining Process

Collective bargaining involves a series of choice points. At every point, the union must decide to:

1) accept the offer on the table--call it W

or

2) continue to bargain for a better offer - W & ΔW

However, a decision to continue to bargain involves a risk because of the possibility of a strike. This could mean a loss of the offer on the table and a final solution less good than W. Now if the probability of a strike is r [$P(S)=r$)], then the probability of no strike is $1-r$ [$P(\bar{s})=1-r$]. Then the rule a rational union uses is to continue to bargain if the expected value of the gain is greater than or equal to the expected value of the loss.

At some point, expected gains from continued bargaining are less than the expected costs so the union chooses to accept the offer on the table. This rule is extremely important and significant in the bargaining process if W is viewed as a package and not just a wage. It does not allow for irrational behavior, but in many cases what appears irrational to one party or an outsider is rational in the eyes of the decision maker.

INSTRUCTOR'S
MANUAL

LIVING UNDER THE AGREEMENT

Prepared by
Dallas M Young

Module Number Five
of
LABOR RELATIONS FOR
MANAGERS OF SMALL AND
MEDIUM-SIZED CITIES
Package VIII

Developed by

SCHOOL OF MANAGEMENT
CASE WESTERN RESERVE UNIVERSITY

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MODULE V. LIVING UNDER THE AGREEMENT

An Overview. Day-by-day decision making and resolution of problems receive comparatively little publicity. Strikes, pickets, strikebreakers and conflict make headlines when collective bargaining breaks down. Conflicts and ensuing settlements make news! Normal settlements do not. Nonetheless--probably minute by minute and hour by hour somewhere--persons who are involved in a work relationship gather information, analyze it, and choose from alternatives as they render the public service for which they have been brought together.

Living under a labor-relations agreement is seldom dull, dry, and uninteresting. Without a collective-bargaining document, the legal right of management to make unilateral decisions has been repeatedly sustained. The ratification and signing of a labor-relations contract bring into the relationship the legal obligation for bilateral determinations. Those who speak for the employees have the right to participate in decisions involving wages (salaries), hours, and working conditions. Some supervisors find it difficult to adjust. Some spokesmen for the employees may even attempt to substitute their unilateral determinations for those of the former bosses.

Throughout the changing relationships there should be no excuse for Managers in the public service to permit their functions, responsibilities, and skills to atrophy. There are reasons to believe that, in general, the persons who represent employees will devote the energy and time needed to look after the interests of their members.

Module V is presented in two parts:

A. The first three-hour session provides an overview of a labor-relations agreement and focuses on the basic contract provisions. The hope and expectation are that this will become a pattern for your continuing search for in-depth understanding of other agreements involving municipal governments. Should you be woried about a limited supply of such documents just stand by for a short time. In the meantime, you may be surprised at the insights which you will get from the unfolding developments in your own community.

B. During the second three-hour session, we shall explore what is one of, if not the, most significant contributions made by labor-relations practitioners in the U.S.A. Together, responsible representatives of labor and management have designed, made, used, and improved the tool which they use for resolving a very high percentage of their disputes under existing contracts. Grievance procedures have provided them with the machinery for reaching decisions which--by their agreement--are final and binding upon them. By whatever it is called, the grievance procedure is the due-process clause of labor relations.

MODULE V. CLASS 1

Management Decisions and Actions for Effective Implementation of the Agreement

I. Objectives

- to recognize that there are significant differences between the private and public sectors, but to accept the commonality of managerial responsibilities under labor-relations agreements.
- to establish managerial obligations of elected and appointed municipal officers.
- to understand the decision-making procedures in unorganized and in unionized settings.
- to protect and maintain managerial rights and responsibilities without being anti-union.
- to appreciate the improvement and protective functions of Union Representatives without allowing the Union to become the exclusive advocate of the City's employees.
- to remember that even though a labor-relations contract has been signed, a sizeable number of the city's employees are not covered by that document.

II. Instructor's Note

Class No. 1 of Module V has been allocated three hours. The Instructor should be free to use the methods which he or she has found most effective in working with students--lecture, discussion, a blend of these, or others.

It should be remembered that even though some of the problems of labor relations in the private and public sectors are different, many of them have much in common. To allow the half century of experience in the private sector to dominate or predetermine what we do in the business of government would be a serious mistake. So, too, would a deliberate effort to disregard that wealth of understanding.

Among other suggestions which may be helpful are the following:

- Use oversimplified organizational charts to identify private and municipal corporate owners and their representatives as well as their managerial and other employees.
- From information and materials in Module VII lay a foundation for living under the labor-relations contract.
- Urge participants to suggest supportive and contrasting insights based upon their own contracts and experiences.

III. Lecture and Discussion Topics

Managerial Responsibilities

Probable Industrial Corporations

Who are the Municipal Managers of Labor Relations?

Under This "Agreement"

Some Basic Provisions

Management Rights

Security for the Union

Security for the Employee

The 1976-78 Elyria-FOP Governing Document

IV. Managerial Responsibilities

A. Corporations. The following organizational chart will be helpful in exploring the concepts of corporate ownership and employee accountability:

	For Profit (Corporation A)	Not-For-Profit (Municipality Z)
The "Owners":	Stockholders (Common, voting on behalf of all owners)	Voters (On behalf of all citizens)
Representatives Elected by "Owners"):	Board of Directors	City Council
Chief Executive:	President	Mayor
Other Managers:	Superintendent	Director of Safety and Service
	Department Heads	Department Heads
	Foremen	Foremen
Other Employees:	Protective Service	Protective Services
	Producers of Goods	Producers of Services
	Maintenance	Maintenance
	Office	Office

1. Even though some of the observations which follow may be oversimplifications, they are made in the belief that emphasis and, indeed, overemphasis on the need for quality managers is justified. This is especially true for persons who are responsible for humanpower utilization when labor costs comprise a high percentage of total costs:

- Corporations have played an extremely important role in the economy of the U.S.A. They have been used in the private and public sectors. Some are incorporated for profit and others are not-for-profit.

- Each corporation has received a charter from the state which has indicated the purpose for which it was created, the owners, and the methods by which it will be financed. Thus, Corporation A will produce and sell goods for a profit and will be owned by the stockholders--with those holding common stock having the right to vote. Corporation Z will produce services for which the citizens of a given geographical area will pay. The incorporated city will be "owned" by the voters.

- The authorized voters elect a governing board which--in theory, at least, and usually in practice--is responsible to the voters.

2. Members of the Board of Directors of Corporation A hire the chief executive officer--usually a president--who, in turn, employs other executive and administrative personnel. The speed with which they move is greatly influenced by the amount of capital available to them. In time, the Managers select the plant location, arrange for the equipment and machinery, hire other employees, assemble raw materials, and produce goods. Their expectations and objectives are to sell the goods at prices which are above their costs of production. The president and the management team are fully responsible to the Board and the stockholders and are expected to make the organization a successful, profit-making corporation.

3. In the municipal corporation, the voters elect the members of Council. They also elect the Mayor as the Chief Executive Officer--in most cities--but in increasing numbers Council may select a City Manager. For many reasons--including the fact that they are much closer to their "owners"--Council members usually have been more involved in managing Corporation Z than their counterparts in Corporation A. They and the Mayor establish policy, and they sometimes become involved in its effectuation. The kind and amount of services rendered by the City's employees, of course, are limited by the amounts of revenue which are available. Both are significantly influenced by the amount and quality of work done by the employees. The Mayor (or City Manager) and the management team are fully responsible to Council and to the voters. They are committed to maximize services within the wishes and financial capacity of the municipality.

B. Who Are the Managers of Municipal Labor Relations?

The municipal labor-relations team--under the state of the art in the 1970's--which will administer the new contract will probably be quite different from the one which negotiated the document. To be sure, some of the persons who were deeply involved in drafting, redrafting, and wrangling over the words and paragraphs of the contract will surely have responsibilities between contract-negotiating years.

A review of the 1974 and 1976 Elyria Reports in Module VII illustrate the point. In 1974, a very large management team--the Chairman and two members of Council's Finance Committee; the Directors of Safety-Service and of Finance; the Solicitor; and the professional Consultant-Negotiator--negotiated the new contract. Administration, thereunder, was handled by the Director of Safety and Services and some Department Heads. By contrast, in 1976 four administrators--the Director of Safety and Service; the Assistant Director; and the Directors of Law and Finance--handled the negotiations. In effectuating the 1976 agreement, the Department Heads and Foremen were given much more authority. Much of the decision-making was delegated by the Director of Safety and Service.

Researchers and writers frequently focus attention on decision-making and actions which take place at upper supervisory levels. Nevertheless, far more decisions are made by lower-level employees and their immediate supervisors than by any other broad group. Few, if any, persons in the management structure receive less attention; yet few are more important in determining the quantity and quality of work than the foremen. They have been described as the most overworked and underpaid persons in Management. (Some persons have made comparable statements about stewards, especially those dedicated to developing sound labor relations rather than those who spend their energies searching for--and, if necessary, creating--grievances.)

> Questions: Should the Chiefs of Fire and Police be on the Management labor-relations team? Why or why not? What position has the FOP taken with respect to the Chief? Was the Chief part of the Elyria bargaining team in 1974? in 1976? Does the role of the Chief change during the life of the contract?
>
> Who carries labor-relations responsibilities in a community whose population is 250 and whose Mayor is part-time and poorly paid?
>
> What variations, if any, does one expect from the team representing a city with a million or more residents?
>
> If you were in charge of your city's team--whatever your title--how would you plan, share, and administer policies?

V. Under this "Agreement"

A. There have been discussion, debate, and litigation over the words "agreement" and "contract" when they have been used in labor relations documents. There has probably been more concern about the use of these words in the public than in the private sector. For many, many years the documents written and signed by the parties were considered to be gentlemen's agreements and were complied with because it was the proper thing for gentlemen to do.

In 1947, the Congress--in Section 301 of the Labor-Management Relations Act (Taft-Hartley)--made labor relations agreements enforceable through the courts. Lawsuits could be brought by or against labor organizations for violation of contracts. That law was applicable to organizations whose products moved in or affected interstate commerce. States and municipal labor relations instruments were not subject to Taft-Hartley.

Documents covering labor relations in municipalities have many names. Most of them use the word "agreement." Rarely, indeed, are they entitled "contracts." A basic question is who has the legal authority to make final decisions? Can the Council, the Mayor, or an autonomous board, for example, permit Management to enter into an agreement with a labor organization? The problem is by no means of recent origin. For example, after the City of Cleveland purchased the urban transit system from a private corporation in the 1940's a question arose over whether the union which had bargained for the transferred employees could continue doing so. The new Management was prepared to carry on the bargaining relationship. A taxpayer suit, however, ultimately resulted in a court ruling that the relationship could be continued but that the governing document should be called "Conditions of Employment" and not an "agreement" or "contract." Was it merely a rose by any other name?

B. Whatever the Ohio precedents and law, Elyria and each of the unions which represented city employees used "agreement." The following excerpt is illustrative:

> Preamble
>
> This Agreement is entered into by and between the City of Elyria, hereinafter referred to as the City, and the Fraternal Order of Police, Lodge Number 30, hereinafter referred to as the Union.

The second paragraph of the preamble established a very important principle:

> It is the purpose of this Agreement to achieve and maintain harmonious relations between the City and the Union: to provide for equitable and peaceful adjustment of differences which may arise, and to establish proper standards of wages, hours, and other conditions of employment.

Thus, the parties expected the agreement to provide mutual benefits.

VI. Some Basic Provisions

Living under a labor-relations agreement involves never-ending decision-making. Successful managers need macro and micro understandings of these rules of the game. The analysis which follows should provide a framework for both.

A. Management Rights. Much has happened since the days in which the owners of property had the virtual unlimited right to hire at a take-it-or-leave-it wage, to require long and irregular working hours, and to fire for any reason. Slowly, unilateral decision-making has yielded to bilateral determinations under the collective-bargaining process.

None the less, Managements have preserved the rights essential to efficient operations. These rights must be used, however, or they tend to atrophy.

While there are other retentions of Management rights in the Elyria-FOP Agreement, two articles are fundamental.

> Article II. Management Rights
>
> Section 1. The City shall have the exclusive right to manage the operations, control the City's property, and to direct the employees in the discharge of their duties. The right to manage and direct the employees includes the right to hire, lay off, discipline, suspend or discharge for proper and just cause and the apportionment of the working force. In the exercise of these rights, the City shall observe and be bound by all provisions of this Agreement.

> Section 2. In entering into this Agreement with the Union, the City does not relinquish any of its responsibilities and requirements expressly provided by the Charter of the City of Elyria and other statutes and ordinances.
>
> Section 3. The City retains its right to administer the Civil Service laws of the State of Ohio and the City of Elyria.
>
> Article VIII. Rules and Regulations
>
> Section 1. The Union agrees that its members shall comply with all Police Department rules and regulations, including those relating to conduct and work performance. The City agrees that departmental rules and regulations which affect working conditions and performance shall be subject to the grievance procedure hereinafter set forth.
>
> Section 2. The Police Chief shall name up to three (3) representatives to sit as a committee to recommend to the Safety-Service Director, new Police Department rules and regulations.

Questions: How would you, as a manager, strengthen the provisions of Articles II and VIII? Will a study of these sections alter your position during your next negotiating sessions? Why or why not?

B. Security for the Union. It is hardly surprising that one of the first provisions in the typical labor-relations contract deals with the security of the union. In all probability, the relatively small number of employees whose initial concern about inadequate pay was increased by their awareness of the vulnerability of each worker (some of them having witnessed the unfair discharge of another employee who had no recourse) needed union assistance. They had survived the risks attendant to unionization. Consequently, they--and the advisers from the national union to which they had turned--wanted security for the institution which represented them.

While it was minimal compared to the union-shop provisions which had been so generally accepted in the construction, manufacturing, mining, and transportation industries, the Elyria-FOP agreement gave the union some security:

Article I. Recognition

Section 1. The City recognizes the Union as the exclusive bargaining agent for all employees of the Police Department that are covered by the State of Ohio Police Pension Laws.

Article V. Pay Roll Deductions of Dues

Section 1. The City agrees to deduct each pay, dues and assessments in an amount certified to be current by the Treasurer of the Union from the pay of those employees who individually request in writing that such deductions be made. The total amount of deductions shall be remitted within ten (10) days by the City to the Treasurer of the Union. This authorization shall remain in full force and effect during the term of this Agreement.

Section 2. Any present or future employee who is not or does not become a member of the Union, or who chooses at a later date not to continue membership, may request that a sum equal to the current dues and assessments be deducted from his pay in the same manner as dues and assessments of the members. Such sums shall be remitted within ten (10) days by the City to the Treasurer of the Union.

Section 3. The Union shall hold the City harmless from liability out of any action by it or omitted by it in compliance with or in an attempt to comply with the provisions of this Article.

Article VII. Non-Discrimination

Section 1. The City agrees not to discriminate against any employee for his activity in behalf of, or membership in, the Union.

Questions: Why, as a Municipal Manager, would you prefer the Elyria-type union security to a maintenance-of-membership provision? A union shop? Or would you? How would you remain objective in discussing with a new policeman the statement in Article V, Section 2? Or would you? In what subtle ways could you discriminate against a union member? Should the agreement have contained a provision which stated that the FOP would not discriminate against a non-union patrolman?

C. Security for the Employees. We live in a world and nation in which the available goods and services have never been large enough to satisfy our human wants. The individual's search for security has been never-ending.

1. Salaries (Wages), Hours, Fringe Benefits, and Security. These items are frequently named as the most important to the security of the individual. Indeed, they tend to preempt other topics during the heated exchange of collective bargaining. Once the parties have agreed upon them, however, they cause few disputes during the life of the contract.

2. Undoubtedly, the one development which can contribute most to the insecurity of an employee is discharge. It is the ultimate penalty of the job relationship. Consequently, when the requirement that Management must have proper and just cause was written into the Elyria-FOP labor-relations contract a very significant step was taken to protect the security of the employee. Subjecting a supervisor's decisions to review at each of the steps of the grievance procedure greatly reduced the frequency of emotion-laden, personality-conflict types of disciplinary actions and discharges.

VII The 1976-78 Elyria-FOP Governing Document

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PREAMBLE: This Agreement is entered into by and between the City of Elyria, hereinafter referred to as the City and the Fraternal Order of Police, Lodge number 30, hereinafter referred to as the Union.

It is the purpose of this Agreement to achieve and maintain harmonious relations between the City and the Union; to provide for equitable and peaceful adjustment of differences which may arise, and to establish proper standards of wages, hours, and other conditions of employment.

ARTICLE I RECOGNITION. The City recognizes the Union as the exclusive bargaining agent for all employees of the Police Department that are covered by the State of Ohio Police Pension Laws.

ARTICLE II MANAGEMENT RIGHTS SEC. 1. The City shall have the exclusive right to manage the operations, control the City's property, and to direct the employees in the discharge of their duties. The right to manage and direct the employees includes the right to hire, lay off, discipline, suspend or discharge for proper and just cause and the apportionment of the working force. In the exercise of these rights, the City shall observe and be bound by all provisions of this Agreement.

SEC. 2. In entering into this Agreement with the Union, the City does not relinquish any of its responsibilities and requirements expressly provided by the Charter of the City of Elyria and other statutes and ordinances.

SEC. 3. The City retains its right to administer the Civil Service laws of the State of Ohio and the City of Elyria.

ARTICLE III NO STRIKE SEC. 1. The Union shall not, directly or indirectly, call, sanction, encourage, finance, and/or assist in any way, nor shall any employee instigate or participate, directly or indirectly, in any strike, slowdown, walkout, work stoppage or interference of any kind in the operations of the Police Department for the duration of this Agreement.

SEC. 2. The Union shall at all times cooperate with the City in continuing the operations in a normal manner and shall actively discourage, and endeavor to prevent or terminate any violation of Section 1. The Union shall immediately notify all employees that the strike, slowdown, work stoppage, or other interference in the operations is prohibited and is not in anyway sanctioned or approved by the Union. Furthermore, the Union shall order all employees to return to work at once.

SEC. 3. The City shall not lock out any employees for the duration of this Agreement.

ARTICLE IV. LAYOFFS AND RESTORATION SEC. 1. When it becomes necessary in the Police Department through lack of work or funds, or for causes other than disciplinary reasons to reduce the force in said department, the youngest employee in point of service shall be first laid off.

SEC. 2. In the event that a position in the Police Department above the rank of patrolman is abolished and the incumbent of such position had been permanently appointed thereto, he shall be reduced to the next lower rank in such department and the youngest officer in point of service in the next lower rank shall be reduced to the next lower rank and on down until the youngest person in point of service has been reached, who shall be laid off.

SEC. 3. The names of persons holding permanent positions in the classified service who have been laid off under the provisions of this Section shall be placed by the Civil Service Commission on an appropriate "layoff list" in order of their original appointment and for a period of not to exceed one (1) year shall be certified to all appointing authorities as in the case of original appointments. Whenever discontinued positions are reestablished or other cause for layoff is terminated and a request is made for certification for eligibles, former employees of the department who have been laid off and whose names appear on the "layoff list" shall be first to receive appointments.

SEC. 4. In the event that a position in the Police Department once abolished and made unnecessary be found necessary to be reestablished within three (3) years from the date of abolishment or should a vacancy occur through death, resignation or any other cause within three (3) years of the date of abolishment of such position of layoff, the oldest employee in point of service of those laid off shall be entitled to the same, providing he was, at the date of his separation, a regular and permanent employee holding a rank at least equal to or above that which had been abolished or found unnecessary.

ARTICLE V PAY ROLL DEDUCTION OF DUES
SEC. 1. The City agrees to deduct each pay, dues and assessments in an amount certified to be current by the Treasurer of the Union from the pay of those employees who individually request in writing that such deductions be made. The total amount of deductions shall be remitted within ten (10) days by the City to the Treasurer of the Union. This authorization shall remain in full force and effect during the term of this Agreement.

SEC. 2. Any present or future employee who is not or does not become a member of the Union, or who chooses at a later date not to continue membership, may request that a sum equal to the current dues and assessments be deducted from his pay in the same manner as dues and assessments of the members. Such sums shall be remitted within ten (10) days by the City to the Treasurer of the Union.

SEC. 3. The Union shall hold the City harmless from liability out of any action by it or omitted by it in compliance with or in an attempt to comply with the provisions of this Article.

ARTICLE VI PREVAILING RIGHTS All rights, privileges and working conditions enjoyed by the employees at the present time, which are not included in this Agreement, shall remain in full force during the term of this Agreement.

ARTICLE VII NON-DISCRIMINATION SEC. 1. The City agrees not to discriminate against any employee for his activity in behalf of, or membership in, the Union.

SEC. 2. The City and the Union agree that there shall be no discrimination against any employee because of sex, race, creed, religion, or national origin, nor shall any person be given special consideration or privileges based on sex, race, creed, religion, or national origin.

ARTICLE VIII RULES AND REGULATIONS SEC. 1. The Union agrees that its members shall comply with all Police Department rules and regulations, including those relating to conduct and work performance. The City agrees that departmental rules and regulations which affect working conditions and performance shall be subject to the grievance procedure hereinafter set forth.

SEC. 2. The Police Chief shall name up to three (3) representatives and the Union shall name up to three (3) representatives to sit as a committee to recommend to the Safety-Service Director, new Police Department rules and regulations.

ARTICLE IX WORK SCHEDULE AND HOURS
SEC. 1. During the period of this Agreement, each employee covered by this Agreement shall work a tour of duty which shall consist of five (5) eight (8) hour days in a calendar week and shall be so assigned by the Chief of Police or his appropriate administrative assistant. These assignments shall be posted in advance for a twelve week period. At no time shall there be less than a twelve week advance schedule posted on the departmental bulletin board.

SEC. 2. Work schedules shall demonstrate an equitable rotation of days off and shifts worked within the calendar year. This rotation shall prevail for officers in a working group, for example: patrol division officers, youth bureau officers, detectives, patrol division field supervisors and patrol division officers in charge. For the purposes of this agreement working group is defined as a unit of employees working in the same division who are called upon to perform similar duties in their daily activity.

SEC. 3. All hours worked in excess of the normal tour of duty in Section 1 shall be considered overtime.

ARTICLE X SHIFT EXCHANGE SEC. 1. Officers in the same working group, as defined in Article IX, Section 2, shall have the privilege of shift exchange. The request for shift exchange shall be submitted to the officers in charge at least seven (7) days previous to the time that the change will take effect. The request shall contain the signatures of the officers and the reason for the proposed exchange. Permission of the officers in charge is required.

If the exchange is denied by either officer in charge, the denial must state the reason in writing. If denied, the request may be appealed within 48 hours to the Chief or his designee who shall reply in writing within an additional 48 hours. A further appeal may be taken to the Director of Safety-Service, who shall reply in writing within 48 hours. The time limits above shall exclude Saturdays, Sundays and holidays.

A shift exchange may be requested with less than seven (7) days notice with the permission of the officer in charge of both shifts.

SEC. 2. It is understood that the exchange does not result in the payment of overtime to the parties involved. It is also understood that the shift exchange includes exchange of scheduled days off if the exchange period includes the days off of one or more officers.

ARTICLE XI OVERTIME SEC. 1. Effective January 1, 1977, all employees covered by the Agreement shall receive overtime pay when called in (when off duty) to departmental business, court appearances, emergencies, special events, or required schooling (excluding college accredited courses for which compensation is already being awarded), in the amount of a minimum of two (2) hours; for time beyond the minimum: for four (4) hours; and for actual time (to the nearest tenth of an hour) for all time beyond four (4) hours.

SEC. 2. Effective January 1, 1977, all employees covered by the Agreement shall receive overtime pay when held over at the close of, or called in before the beginning of a regualr shift for any reason, in the amount of the actual time (to the nearest tenth of an hour). Any employee clocking in late shall be docked to the nearest tenth of an hour.

SEC. 3. Overtime shall be paid at one and one-half times (1½) a rate determined by dividing the employee's annual base pay by 2080 hours.

SEC. 4. Effective January 1, 1977, the total amount of overtime accumulated by each officer shall be ascertained and certified by the office of the Safety-Service Director. Each officer may then use hours in this bank as time off with the permission of his officer in charge. When the total number of hours in this bank falls below forty-eight (48) hours, the officer will again accumulate compensatory time off according to Sections I, II, and III of this article. When the officer raises his accumulated compensatory time to a level above forty-eight (48) hours, he will receive overtime pay as in Sections 1, 2, and 3.

SEC. 5. Effective January, 1977 and continuing thereafter in the first month of each calendar quarter, each officer shall have the option of reducing by twenty (20) hours his accumulated compensatory time. Payment for these twenty (20) hours shall be at a rate determined by dividing the employee's annual salary (including longevity) on July 4, 1976 by 2080.

ARTICLE XII WAGES SEC. 1. The base pay for all ranks of the Elyria Police Department shall be increased by $618.00 annually, effective July 4, 1976, and by an additional $520.00 annually, effective July 3, 1977.

SEC. 2. On the employee's second anniversary date, the employee will automatically enter the longevity program. This shall be one per cent (1%) of the base pay of rank per year of service to and including a maximum of twenty per cent (20%) added to his base pay.

ARTICLE XIII LIFE INSURANCE The City agrees that it will pay the sum of Five and 50/100 Dollars ($5.50) per employee per month for life insurance to the life insurance carrier agreeable to both the City and the Union.

ARTICLE XIV VACATION SEC. 1. All employees covered by this Agreement shall be granted vacation leave with full pay according to the following schedule:

1 year but less than 7 - 2 weeks
7 years but less than 14- 3 weeks
14 years or more - 4 weeks

SEC. 2. If an employee is terminated, voluntarily or involuntarily prior to taking his vacation, he shall receive the prorated portion back to his anniversary date of any earned but unused vacation leave at the time of separation. In the case of death of the employee, the unused vacation leave shall be paid in accordance with and to the extent provided for by the Ohio Revised Code, Section 2113.04.

SEC. 3. Members in scheduling their vacation period will do so in accordance with the procedures established by the Elyria Police Chief.

ARTICLE XV HOLIDAYS SEC. 1. The employees covered by this Agreement, who are assigned a rotating shift and days off, are authorized ten (10) additional vacation days in lieu of the hereinafter stated ten (10) holidays, whether or not the employee actually performed services on the stated holidays. All other employees will have the option of taking the holidays off, or additional vacation days.

1. The first day of January, known as New Year's Day.
2. The third Monday in February, known as Washington-Lincoln Day.
3. The last Monday in May, known as Memorial Day.
4. The fourth day of July, known as Independence Day.
5. The first Monday in September, known as Labor Day.
6. The second Monday in October, known as Columbus Day.
7. The eleventh day of November, known as Veteran's Day.
8. The fourth Thursday of November, known as Thanksgiving Day.
9. The twenty-fifth day of December, known as Christmas Day.
10. One-half (½) day off for Christmas Eve and one-half (½) day off for Good Friday.

SEC. 2. In addition to Section 1 above, all employees shall receive one (1) day off per year for personal business, one day off for employee's birthday, and one (1) day off for Martin Luther King Day.

SEC. 3. In addition to Sections I and II above, all employees shall receive one (1) day off for any day appointed and recommended by the Mayor, Governor of the State of Ohio, or the President of the United States of America as a holiday, celebration or a day of mourning.

ARTICLE XVI CLOTHING ALLOWANCE SEC. 1. All protective clothing and protective devices required of employees in the performance of their duties shall be furnished without cost to the employees by the Employer. (See attached list.)

SEC. 2. Each employee shall receive a clothing allowance of Three Hundred Twenty-Five and no/100 Dollars ($325.00) annually for purchase of regulation uniform and clothing as prescribed by the Chief of Police to be paid in the month of January of each year.

SEC. 3. Each new employee is entitled to a Four Hundred and no/100 Dollars ($400.00) initial clothing allowance.

ARTICLE XVII MEDICAL-DENTAL SEC. 1. The City agrees that the present Blue Cross-Blue Shield group hospitalization and medical insurance coverage shall continue, and the present policy shall be increased to the Blue Cross and Blue Shield High Level Benefit Plan with Two Hundred Fifty Thousand and no/100 ($250,000.00) major medical protection.

SEC. 2. The City agrees that the coordinated dental plan for Blue Cross and Blue Shield Major Medical Plan subscribers shall be included.

SEC. 3. The City agrees to continue payments of premiums on the above High Level Benefit Plan and the coordinated dental plan insurance policy in full without cost to the employee.

SEC. 4. The Blue Cross prescription plan now in effect shall continue to be paid by the City.

ARTICLE XVIII SICK LEAVE SEC. 1. Each employee covered by this Agreement shall be granted sick leave with pay for personal illness or injury which will be earned and accumulated at the rate of one and one quarter (1¼) days for each month on pay roll.

SEC. 2. Employees may use sick leave upon approval of the responsible administrative officer of the City for absence due to illness, injury, exposure to contagious disease which could be communicated to other employees and for illness in employee's immediate family which is defined as spouse, children, parents and spouse's parents.

SEC. 3. Any accumulated sick leave of the employee shall be paid to the employee upon his permanent disability or retirement or upon his death as provided in Section 2113.04 of the Ohio Revised Code, for the first one hundred five (105) days One Hundred percent (100%) and for any amount in excess of one hundred five (105) days Fifty per cent (50%).

SEC. 5. For the purpose of computing the amount owed to any full employee under this Article, the following method shall be followed:

A. All salaries shall be computed on a per day basis to the nearest cent including longevity.

B. For hourly employees, the per pay basis shall be the hourly rate time eighty (80) hours plus longevity.

C. For the purposes of computing parts of pay periods, all employees shall be determined on the basis of a five (5) day week.

ARTICLE XIX INJURY ON DUTY SEC. 1 Every permanent employee of the City shall be allowed full pay for a period not to exceed six (6) months on account of sickness or injury, provided that such disability was occasioned while in the direct line of full-time duty, and such permanent employee shall receive one-half (½) pay not to exceed six (6) additional months. In no event shall such benefits exceed twelve (12) months. In the case of full-time employees working on an hourly basis, benefits shall be computed on a basis of forty (40) hours per week. Specifically excluded from payments authorized herein are temporary and seasonal employees.

SEC. 2. To apply for benefits under Section 1 hereof, written application shall be made to the Director of Safety-Service accompanied by a certificate from a registered physician stating that such employee is unable to work and that such disability is the result of or is connected with the duties of such employee. It shall be the duty of the Director to approve or reject the application and in so doing he may require examination by a registered physician of his selection.

SEC. 3. In the case of injury in the actual discharge of duty, a deduction may be made to the extent of any sum an employee may receive from any compensation fund to which the State, County, or City contributes.

ARTICLE XX BEREAVEMENT TIME SEC. 1. Employees shall be granted a leave of absence with pay in the event of the death of his or her spouse, their parents, children, brother, sister, grandparents, grandchild, brother-in-law, sister-in-law, daughter-in-law and son-in-law.

SEC. 2. An employee may absent himself for this purpose for a period not to exceed three (3) work days for each death, including travel within the State of Ohio, and five (5) work days for each death, including travel outside the State of Ohio.

ARTICLE XXI EDUCATIONAL SEC. 1. An employee required to attend schooling or training sessions shall receive overtime for the time actually attending classes, except for the days that the employee is scheduled to work. An employee who volunteers for schooling must waive the above overtime provision.

SEC. 2. A college incentive program is hereby adopted for Police officers as follows:

1. The base pay of a Police officer shall be increased one and no/100 ($1.00) per month for each credit hour of approved Police Science course successfully completed.
2. A passing grade of "C" or better is required in order for the individual Police officer to get credit under such incentive program. The Police officer shall be given credit for successfully challenging or auditing a class. Said successful challenging or auditing to be the same as "C" or better.

3. The course selection shall be based on courses at the Lorain County Community College or approved by Lorain County Community College leading to a Police Science degree.

4. A maximum of ninety-six (96) credit hours shall be available for credit under this college incentive program.

5. No credit shall be earned until fifteen (15) credit hours have been earned by the individual Police officer.

6. Credit shall be given for approved courses successfully completed by a grade of "C" or better prior to the adoption of this program or prior to the employment as a Police officer.

7. The longevity program in effect for Police officers shall not be considered for additional pay under this program.

SEC. 3. The City shall reimburse all employees for any costs incurred for books and tuition, not otherwise reimbursed, upon successful completing of courses or schooling taken as follows:

One hundred per cent (100%) reimbursement for school year 1976-1977.

Fifty per cent (50%) reimbursement for school year 1977-1978.

ARTICLE XXII UNION LEAVE Delegates from the Fraternal Order of Police to the Fraternal Order of Police State Board Meetings, State Conferences, or National Conferences shall not be prevented from attending these meetings due to work schedules, manpower shortages, or any other reason, provided 30-days notice is given. The Union agrees that this leave of absence will be without pay, and shall not exceed ten combined working days.

ARTICLE XXIII GRIEVANCE PROCEDURE SEC. 1. The word "grievance" as used in this Agreement refers to an alleged failure of the City or the Union to comply with law or with the provisions of this Agreement, or any other complaint or dispute concerning employee relations, working conditions and/or unjust inequitable treatment. In cases of an employee's dismissal, suspension or disciplinary action, the employee and/or group of employees shall retain their rights under provisions of the Civil Service laws of the State of Ohio and the City of Elyria.

Nothing in this Article is intended to deny Union employees any rights available at law to have redress to their legal rights, including the right to appeal to the Civil Service Commission where that body has jurisdiction. Once the employee elects to take this action, he then shall be denied the remedy of the grievance procedure and arbitration provided herein.

SEC. 2. The Union shall designate an official Grievance Committee, consisting of three (3) members of the bargaining unit, and shall notify the City in writing as to the membership of this Committee.

SEC. 3. Any grievance or dispute as defined in Section 1, which may arise shall be processed in the following manner:

Step 1. An employee, or group of employees having a grievance shall present the grievance in writing to the Union Grievance Committee within ten (10) calendar days of the occurrence of the dispute or knowledge of such dispute. The Grievance Committee, upon receipt of the written notices or petition, shall within ten (10) calendar days determine if a grievance exists. If, in the opinion of the Grievance Committee, no grievance exists, the committee will recommend that the employee withdraw his grievance. In the event the employee does not elect to withdraw his grievance, he may continue to exercise his rights under Step 2, Step 3, and Step 4.

Step 2. If the Grievance Committee determines that a grievance exists, or if the employee elects to continue the grievance notwithstanding the recommendation of the Grievance Committee, the committee or employee shall within thirty (30) days with or without the physical presence of the aggrieved employee, or group of employees, present the grievance to the Chief or acting Chief of the Police Department for adjustment on forms provided by the Police Department. The Chief or acting Chief may set necessary meetings of the parties involved in the grievance and dispute as he deems necessary. After conducting his investigation, he shall respond to the aggrieved and the Grievance Committee in writing giving his decision ten (10) business days from his receipt of written notice of the grievance and/or dispute.

Step 3. Should the aggrieved not be satisfied with the response from the Police Chief or acting Chief, the grievance or dispute, together with all other pertinent information, may be filed by the aggrieved in writing with the Safety-Service Director within five (5) calendar days, from the receipt of the decision by the Chief or acting Chief.

The Safety-Service Director shall conduct hearings and/or investigations into the grievance and/or dispute with parties as he deems necessary. The Safety-Service Director shall give his response in writing to the aggrieved and the Grievance Committee within ten (10) business days of the receipt of grievance.

Step 4. Should the aggrieved not be satisfied with the response from the Safety-Service Director, the grievance or dispute, together with all other pertinent information, may be filed by the aggrieved in writing with the Mayor within five (5) calendar days from the receipt of the decision by the Safety-Service Director.

The Mayor shall conduct hearings and/or investigations into the grievance and/or dispute with the parties as he or she deems necessary. The Mayor shall give a response in writing to the aggrieved and the Grievance Committee within ten (10) business days of receipt of grievance.

Step 5. If the grievance is still unsettled after completion of provisions of Step 4 and the official written response from the Mayor, either party may within fifteen (15) calendar days of the receipt of the Mayor's written response, request arbitration, under provisions of Article XXIII.

SEC. 4. Unless a specific request is granted for reasonable extension of times herein listed, the failure of the Union and/or aggrieved to advance a grievance as scheduled above, will be deemed to be an acceptance of the answer given at the preceding Step, and such answer shall be binding on the aggrieved employee, or group of employees.

SEC. 5. Unless a specific request is granted for reasonable extension of time herein listed, the failure of the City representative to give an answer as scheduled above will presume that the claims given at the preceding Step are valid and a decision will be rendered in favor of the aggrieved.

SEC. 6. It is agreed by both parties that a representative of the Fraternal Order of Police, or the aggrieved's private legal counsel may assist and represent the aggrieved employee or group of employees at any Step, if so requested by the Union or the aggrieved.

ARTICLE XXIV ARBITRATION PROCEDURES SEC. 1. If, under the provisions of the Grievance Procedure, Article XXII, a grievance is not settled and either party has notified the other that arbitration is desired, a Board of Arbitration shall be appointed by the two (2) parties in the following manner: The Board of Arbitration shall be composed of three (3) persons, one (1) appointed by the City, one (1) appointed by the Union, and a third member to be agreed upon by the two (2) appointees. The members of the Board, representing the City and the Union, shall be named within fourteen (14) days from the date of the written request for arbitration.

If, after a period of ten (10) days from the date of appointment of the two (2) arbitrators by the City and the Union, the third arbitrator has not been selected by them, then either arbitrator may request the American Arbitration Association to furnish a list of three (3) members of said Association from which the third arbitrator shall be selected.

The arbitrator appointed by the City shall eliminate one name from the list and notify the Union arbitrator. The arbitrator appointed by the Union shall then eliminate the second name from the list. The remaining third name on the list shall become the third member of the Arbitration Board and assume the position of Chairman.

The American Arbitration Association shall be notified of the choice from their list and the arbitration proceedings and hearing shall be conducted in accordance with the "voluntary Labor Arbitration Rules" of the American Arbitration Association

SEC. 2 ARBITRATION RULES

1. It shall not be within the jurisdiction of the Board of Arbitration to change an existing wage rate, or to establish a new wage rate, or to rule on the City's right to manage or direct its work force unless there is contained herein a specific and explicit limitation of such rights, or to infer from any provisions of this Agreement any limitations of such rights.

2. The Board of Arbitration shall not add to, subtract from, ignore or change any of the provisions of this Agreement.

ARBITRATION PROCEDURE

3. Each party shall furnish the Board of Arbitrators and to the other party whatever facts or material the arbitrators may require to weigh properly the merits of the grievance being arbitrated, provided, however, that such facts and materials must have been presented and discussed during the grievance procedure, preceding appeal to arbitration.

4. The costs of arbitration, including fees of the third arbitrator Chairman, Court reporting and secretarial charges, if any, shall be borne equally by the two (2) parties. Cost and fees, if any, for the arbitrators appointed by the City and the Union shall be the responsibility of the appointing party.

5. The decision of the Board of Arbitration, which shall be a simple majority of the Board, on an arbitrable matter within the jurisdiction, shall be final and binding on both parties. The Board of Arbitration will be asked to render its decision within thirty (30) days after conclusion of the hearing.

ARTICLE XXV PARITY The City agrees that any additional benefits achieved by any other City employee or City group or groups, shall be made available to the Union on the same terms and conditions if the Union wishes to adopt such benefits.

ARTICLE XXVI VALIDITY Should any Section or provision of this Agreement be declared by Courts to be unconstitutional or invalid, such decision shall not effect the validity of the Agreement as a whole, or any part thereof, other than those parts so declared to be unconstitutional or invalid.

ARTICLE XXVII DURATION AND TERMINATION The provisions of this Agreement shall be effective as of the 4th day of July, 1976, and shall remain in effect until the 2nd day of July, 1978.

This Agreement approved and signed this _____ day of ________________, 1976.

MODULE V. CLASS 2

The Due-Process Clause of Labor Relations

I. Objectives

- to become acquainted with the collectively bargained procedure which has greatly reduced the frequency and number of interruptions in the production of goods and services. Quick, emotional outbursts of heated words which are often followed by "biting the bricks" result in sizeable losses of income for employees and company.
- to remember that the acceptance of a grievance procedure was almost always accompanied by no-strike, no-lockout provisions. The orderly process was much less expensive to all Parties than work stoppages.
- to understand that most grievances are settled without fanfare and that only a few are brought before an outsider for final and binding decisions.
- to develop a respect for the grievance procedure as a special kind of due process.
- to make your own arbitral decisions in selected cases.

II. Instructor's Note

Class No. 2 of Module V has also been given three hours. The Instructor should use his favorite methods for handling the session.

A review of the concept of due process, as it has been used in the U.S.A., would be helpful. The similarities and differences between the procedures for protections under law and under labor-relations agreements should be discussed. If the Instructor has not served in a managerial capacity, as a union advocate, or as an arbitrator, he or she may wish to bring in one or more practitioner guest speakers. It is quite probable that persons who are enrolled in the class will have had relevant experiences which could be utilized in the class.

Several excellent references may be used for other cases. The Bureau of National Affairs, Commerce Clearing House, and Prentice-Hall publish arbitration services. They are nicely indexed by topic, company, union and arbitrator.

III. Lecture and/or Discussion Topics

No strikes! No Lockouts!

Grievance Procedure

Arbitration

Selected Cases

IV. No Strikes! No Lockouts!

Your attention is directed to Article III, Sections 1, 2, and 3 of the Elyria-FOP. Please reread those provisions. Note that emphasis has been placed upon the responsibilities of the Union--as an organization--to prevent Police strikes during the life of the agreement. Several sentences and many words state what the Union shall do and shall not do to prevent strikes. By contrast, one short sentence provided that the City shall not lock out any employee for the duration of the contract.

The pioneering parties in the use of grievance procedures were concerned about their individual and mutual economic losses from strikes which occurred during the life of the agreement. The record suggests that the use of the grievance process, including arbitration, has grown because there were sizeable net savings in money and human relationships. Industrial warfare was, and is, very expensive.

V. Grievance Procedure

Article XXIII of the Elyria-FOP agreement contained an in-the-family process. A definition of a grievance was included in order to distinguish between a gripe and a real grievance. Some employees gripe or "bitch" about many things. Putting the complaint in writing and having it reviewed by a standing Grievance Committee undoubtedly results in the withdrawal of many gripes. Similarly, requiring the supervisor to put any reply in writing has a sobering impact. When the supervisor knows that the actions which have been taken may be subjected to review by persons within the company and possibly by someone from the outside, it may make a difference in the supervisor's decision.

The first four steps of the Elyria contract involve actions and reviews by persons in City Management and in the Fraternal Order of Police. Subject to the possibility of legal actions by an Aggrieved person whose grievance has been dismissed, the Parties are at liberty to resolve the grievance as they see fit. This may be done at any step of the procedures.

Criteria of a good grievance procedure have been described by many labor-relations specialists. One of the best lists was prepared by Milton Derber and Catherine Cutler during World War II:

- An agreement should clearly specify what types of issues are subject to the grievance procedure.

- There is no ideal grievance procedure. Each procedure must be tailored to the establishment it is designed to cover.

- Individual employees may, under the National Labor Relations Act, present their own grievances to management, but a union representative must participate in any settlement.

- Grievances should be settled as close to the site of origin as possible. (This means adequate training of foremen and union representatives in the handling of grievances and interpretation of the contract.)

- Grievances should be settled as rapidly as possible. When delays tend to occur, time limitations for one or more of the steps involved may be desirable.

- Presentation of grievances in writing may or may not be necessary in the early steps of grievance procedure, depending upon local conditions, but it is highly desirable in the later stages.

- Before any grievance is referred to a neutral person or board, an attempt at settlement should be made by top union and management officials.

- Every procedure should contain a provision for arbitration of grievances as a last resort.
- Outside union officials should have the right to investigate grievances within a plant, provided due notice is given to management and care is taken not to interrupt production unnecessarily.
- Investigation and settlement of grievances should be confined to nonworking hours as much as possible. When time must be spent during working hours, however, the payment of union representatives by the company cannot be considered a "right" but rather a voluntary phase of the problem of making collective bargaining work more successfully.

VI. Arbitration

You will search in vain for the words due process in a labor-relations contract. Nevertheless, grievance procedure is a form of due process.

Under Articles V and XIV of the U.S. Constitution, a person may not be deprived of life, liberty, or property without due process of law. Under a typical labor-relations agreement, a person may not be deprived of his or her job without just cause. A person may own property in the amount of $40,000--whose protection and preservation, of course, are important. The same person may have an average income of $20,000 per year from a job and will receive $800,000 over a forty-year work life. The property right is protected by law, but the job--which the courts have held is not a property right--is not. The extra protection which a person covered by a labor-relations contract has over a nonunion employee is most important.

Arbitration is frequently confused with other dispute-resolving methods--such as conciliation and mediation. The conciliator must be a good listener. While he, in the presence of the disputants, listens to them, they may hear something they have not really heard before and resolve their dispute. The mediator would do that, but would also make suggestions to them --either in group or individual meetings--and would continue to search for a settlement. The arbitrator, by contrast, is neither a conciliator nor a mediator. He has been called in to serve in a semi-judicial capacity.

By agreement of Labor and Management, the terminal step of their grievance procedure is arbitration. The process is operative during the life of the contract. Hence--in the absence of some additional and specific provision--neither party is obligated to submit new-contract disputes (interest) to arbitration.

Arbitration of issues under existing labor-relations contracts has had much greater acceptability in the U.S.A. than in any other nation. This is a voluntary process set up by Managements and Unions through collective bargaining. It is enforceable under the laws of contract. Under no circumstances should it be confused with compulsory arbitration which may be required by statute. It is the machinery of the parties. They select the arbitrator or arbitrators. They are at liberty to choose anyone who is acceptable to both of them. They present their conflicting points of view during the arbitration hearing--with the opportunities for presentation of evidence and testimony, in a semi-formal setting. They agree beforehand that the decision of the arbitrator or the arbitration board shall be final and binding upon them and upon the grievant. They usually split the costs of the arbitration charges and expenses, although there are some contracts which require the loser to pay the entire costs. (In rare occasions, the agreement may require the winner to pay.) They reserve the right to invite the arbitrator or the chairman of the board to serve them again. Each has the right to criticize or praise the decision. This is the process. Arbitrators have no vested interest in the process and, therefore, are very expendable.

Article XXIV of the Elyria-FOP agreement is rather typical. The arbitrators are chosen through the American Arbitration Association. Some municipalities turn to the Federal Mediation and Conciliation Service for names from its list of experienced arbitrators. Still others request the AAA or the FMCS to submit names of persons who are members of the National Academy of Arbitrators.

> Questions: What are the comparative costs of one day of lost production caused by a strike and an arbitration hearing which was held in lieu of a strike? Would you expect the number of cases reaching arbitration in the months immediately preceding a local union election to be greater or fewer than in the months following the election? If you knew that your foreman's position was weak but were sure that you could win the case because the grievance was untimely filed, would you carry it to arbitration? Why or why not? Who should pay for the hours which are lost by an employee who is called as a witness?

Would the answer differ if it were in the private or public sector? Are you sure?

VII. Selected Cases: There are many published arbitration reports and decisions about discharges. (See Bureau of National Affairs, Inc.; Commerce Clearing House, Inc.; and Prentice-Hall, Inc.) The two cases which follow have been selected because several unusual factors provide opportunities for discussion and debate. The public employees who were involved were in the service of state and municipal governments.

A. In the Matter of:

Ohio Civil Service Employees Association	Arbitration Report and Decision
and	
Department of Mental Health & Mental Retardation, State of Ohio (Hawthornden State Hospital)	Grievance No. H-397 Willie B. Fluckers

Present for the Hearing--at Hawthornden State Hospital, Northfield, Ohio, 44067, on January 9, 1975;

For the Union: Patrick F. Timmins, Jr., Esq., Columbus, Ohio; Willie B. Fluckers, Activity Therapist II, Aggrieved, and Witness; Genevieve Dreyer, Registrar, Outpatient Clinic, Timekeeper Community Service Unit, and Witness; Stephan Posakiwsky, Chaplain and Witness.

For Management: Donald R. Keller, Chief of Labor Relations, Columbus, Ohio; Jeff Fox, Personnel Officer; Paul F. Carrier, Geriatric Administrator and Witness; Val Berzzarins, Acting Superintendent and Witness.

Observers: Anita Szachury and Susan Queen, Personnel Clerks; J. A. Geer, M.D., Director, Community Service Unit.

Arbitrator: Dallas M Young, Cleveland, Ohio (Member, Panel of Arbitrators, selected by the Parties.)

Question: The Parties agreed that the issue in the subject case was clear and that a formal stipulation was not needed.

Union Position: (As summarized by the Arbitrator from documents introduced, and from notes taken, at the hearing.)

The Union and the Aggrieved contend that Willie B. Fluckers should be paid for overtime hours on which he was on the job during the months of October, November, and December, 1974. Grievance H-397 is based on the violation of Administration Rules, Civil Service Law, the Contract between the Parties, and/or past practices.

The Timekeeper was called as a Union Witness. She testified that during the period in dispute, Fluckers had punched in and out seven days per week. She had repeatedly called this fact to the attention of the Geriatric Administrator and the Personnel Director. She, with the support of her Supervisor, took the position that overtime would be paid only if written authorization were received. Later, she explored the possibility of using his accumulated hours for compensatory time should the December-January illness of the Aggrieved make it desirable. She received a January 28 memo from the Geriatric Administrator saying that he had never authorized a seven-day week for Willie Fluckers. On the other hand, the Personnel Director told her that he and the Superintendent believed that Fluckers should be paid. Neither, however, ever gave written authorization for payment. From late January until early June, Fluckers attended classes (in one of the hospital buildings) on Monday and Tuesday; worked on Wednesday, Thursday, and Friday; was off on Saturday and Sunday; and was paid for forty hours per week.

The second person called by the Union had taken the Clergy Training Course--offered by Ashland College at Hawthornden Hospital--and had completed it in 1973. At the time, he was classified as an Activity Therapist II. He was also serving as a Volunteer Priest for hospital residents who were of the Eastern Orthodox persuasion. He attended classes on the first two days, handled his duties as Activity Therapist II on the next three days, and was paid for forty hours per week. He had no required Saturday and Sunday responsibilities. Approval had been given to him by the Superintendent and by his Supervisor (Music Therapy). In June 1973, after the course had been completed, he was reclassified as Chaplain II.

The Aggrieved stated that he had been employed at Hawthornden for eight years. His classification at the time of the grievance was Activity Therapist II. Previously he had attended a theological seminary for three years and had been ordained as a Protestant Minister. When he learned that Ashland College would be offering a course on the hospital grounds, he discussed with the Superintendent the advisability of his enrollment. He was encouraged to take the course and was told to discuss the proposal with the Geriatric Administrator. Upon doing so, the Administrator said: "What can I say, he (the Superintendent) has already approved it." Upon learning that the sessions would be held on Mondays and Tuesdays, the Administrator told Fluckers that he would have to work on Saturdays and Sundays. With that, Fluckers paid his own tuition and costs (about $400). From late October until late December, 1973, he clocked in and out on seven days per week. While he was away in January because of illness, he learned that another Activity Therapist II (previous witness) had enrolled in the same course--one year earlier--that he had worked on Wednesdays, Thursdays, and Fridays (never Saturdays and Sundays), but that he had been paid for forty hours per week. Having returned to work at mid-January, he immediately conferred with the Timekeeper and with the Superintendent. The latter assured him that if the other Activity Therapist II (the Eastern Orthodox Priest) had been paid for a full week while working at his regular job on three days, Fluckers would be treated the same way. The Superintendent called the Personnel Director to his office and, in Fluckers' presence, told him to find a way to pay the Aggrieved. Sometime later--after his schedule had been altered to three days' work--in a meeting with the Personnel Director and the Geriatric Administrator, Fluckers was asked to withdraw his claim for back pay. Whereupon, the Aggrieved told them that it was more a matter of principle than money and that he would not withdraw his request for payment. Several times, the Witness testified, he was assured by both the Superintendent and the Personnel Director that he would be paid for the overtime hours. When he returned to the Timekeeper, she told him that she would pay him--if and when she received written authorization. He attended class two days, worked three, and was paid for five per week--always believing that, in time, he would be paid the promised amount. He received the certificate for successful completion of the course in early June 1974. On June 28, he saw the Superintendent who again said Management would pay him. On the same day, he was told by the Personnel Director that "the Superintendent was giving him the runaround." For the first time, he concluded that he would not be paid for the Saturdays and Sundays of October, November, and December. He formally grieved on July 1, 1974. Throughout his testimony, the Aggrieved contended that the Ashland College Course was job-related. The topics (Pastoral Counseling; Practical Aspects; Psycho-Social

Aspects; Group Dynamics; Crisis Situations) made him a better therapist. As the coordinator in the activity therapy department, he supervised four employees. He planned and supervised programs for 168 Geriatric Patients who were about to be returned to the outside community. On cross-examination, the Aggrieved acknowledged that he had not been told by the Geriatric Administrator in October, 1973, that he would receive extra pay for Saturday and Sunday; that the question at issue had not arisen until after mid-January, 1974; and (with some hesitancy) that the Personnel Director had resigned on March 30 and was in no official hospital capacity when he made his remarks on June 28. He agreed that he was not classified as Chaplain--for whom the Ashland College Course had been offered. He acknowledged that he had never specifically asked the Superintendent to put in writing authorizations for him to take the course and for him to be paid for the disputed hours.

In summary, then, the evidence and testimony show that the Geriatric Administrator required him to work on Saturday and Sunday. The result was that Fluckers was at the hospital for fifty-six hours per week. The Aggrieved was allowed time off for the course. He enrolled. The Director approved his action and regularly promised him that he would be paid. When--after months of delay and disappointment--he concluded that he would not be paid, he grieved.

The Union requests that Willie Fluckers be made whole for his unpaid overtime hours.

Management Position: (As summarized by the Arbitrator from documents introduced, and from notes taken, at the hearing.)

Management contends that in October, 1973, Willie Fluckers and his Supervisor reached an agreement about his work scheduled for the ensuing months. Even though his work-week was modified in January, 1974, the evidence and testimony will not support the Aggrieved's request for payment for overtime during the months of October, November, and December.

The person who had been Assistant Superintendent at the time the subject grievance arose testified in behalf of Management's decision. Subsequently, in August, 1974, he had been appointed Acting Superintendent. The Witness testified that the Superintendent had delegated to him the responsibility to act. (The Union objected to his appearance because, under the labor-relations contract, the Superintendent--not the Assistant--was charged with hearing grievances at the pre-arbitration step. The objection was not sustained.) In direct examination, he denied that the Chaplain's Course was job-related for an Activity Therapist II. He acknolwedged familiarity with the previous case. In that instance, however, the man had acted as a volunteer Priest to persons in the hospital, and, with the completion of the course he moved into the classification Chaplain II. Under the Administrative Rules, P.L. 29-08 (Jt.Ex. F) "an employee may be allowed time off from his position without loss of pay for the purpose of taking job-related educational courses . . ." He had had nothing to do with the arrangements. At no time had the Superintendent told him that the Aggrieved's reduced work schedule had been given prior approval. The Witness testified to the authenticity of the Superintendent's signature on a document accepting the resignation of the Personnel Director, effective March 30, 1974. (Mgmt.Ex.No. 1) On cross-examination, the Witness acknowledged that the course could have been "help to the Aggrieved but not, necessarily, as an Activity Therapist." Persons in that classification are repeatedly advised not to attempt patient consultation--to leave that responsibility to other specialists. On further cross, he acknowledged that he did not know that the classification's duties included planning and coordinating programs and supervising employees. Nevertheless, as the third-step hearing officer, he decided that the North East Ohio Clergy Training course was for Chaplains--not for Activity Therapists. At no time did he deny that the Superintendent had authorized Fluckers' attendance. His July, 1974, decision in the case was under the authority delegated by the Superintendent. He testified that the involved Personnel Director had left his job in March, 1974, and that the Superintendent had been transferred to another Ohio location in August. Finally, on redirect, the Acting Superintendent said that under P.L. 29.08 he would refuse to approve the chaplaincy course as job-related to Activity Therapist.

The Geriatric Administrator--who had served in the position for two years--said that he had been repeatedly involved in the subject case. Fluckers came to discuss with him possible enrollment in the course. Upon learning that the class would meet on Mondays and Tuesdays, from October to June, he approved his registration. He thought that the course could bring some benefits to the patients. Because of some scheduling flexibility, he and Fluckers were able to agree that the latter would attend class on Mondays and Tuesdays and that his work schedule would be Wednesday through Sunday. At no time did he intend, at no time was it agreed, that Fluckers would be paid overtime for Saturdays and Sundays. Nothing came of the arrangement until late January, when the Timekeeper brought to his attention the fact that Fluckers had punched in and out on seven days per week and that he was asking to be paid for the overtime hours. She requested written instructions about how the issue should be handled. On January 28, he sent her a brief memo: (Jt.Ex. B, Attachment)

> It has been brought to my attention that Mr. Fluckers may be entitled to 120 hours of compensatory time. This is to advise you that no such arrangement as clocking in seven days a week was agreed on between Mr. Fluckers and myself.
>
> The informal agreement with Mr. Fluckers, and this was verbal, was that I would permit him to attend the Chaplaincy Classes on Monday and Tuesday of each week and for those two (2) days away from his work he agreed to work Saturday and Sunday to make his work week 40 hours and/or 5 days.
>
> This memo will give you direction as to how you should handle his time.

Shortly thereafter he was asked to attend a conference with the Personnel Director and Fluckers. At the instructions of the Superintendent, they were told to try to resolve the issue. He stuck to his position. Fluckers stuck to his. Fluckers' workweek was changed so that, henceforth, he would be paid for forty hours per week--two in class and three days on the job. At no time did he say, in that conference, that he wanted the issue resolved, even if he himself had to pay for the overtime hours. The Personnel Director appeared to be disappointed that the dispute was not resolved but that it would be pursued. On cross-examination, he was asked whether he was Fluckers' authorized administrator, and his reply was: "Program-wise." The Superintendent, however, was the appointing authority for employees. "Apparently I was Fluckers' administrative authority." While he personally had not heard the Superintendent approve Fluckers' enrollment, it was apparently true that he had done so.

In summary, Management emphasized the fact that an October, 1973, agreement between the Supervisor and Willie Fluckers changed his workweek to Wednesday through Sunday. In January, 1974, the schedule was changed by agreement. At no time did the Superintendent intend that there should be a retroactive adjustment and payment--as requested by Fluckers. Even though the Superintendent had the authority to overrule the Geriatric administrator, he did not do so. The cause for the grievance arose in February. Yet, Fluckers' grievance was not written and dated until July 1, 1974. At best, he was derelict in filing. Finally, the past practice, on which the claim was based, involved very different circumstances. To be sure, both men held the classification Activity Therapist II when they enrolled in the Ashland College course for Chaplains. But the Eastern Orthodox Priest for some time had been serving as a Voluntary Chaplain in the Hospital, and after the completion of the course he was reclassified to Chaplain II. At no time had either of these situations applied to Fluckers. Whatever his reasons after January, 1974, Willie Fluckers did not expect to be paid overtime for Saturday and Sunday between October and December, 1973.

As a rebuttal witness, Management called the Aggrieved. He was asked when the Personnel Director--to whom so many references had been made during the hearing--had resigned. His reply was that he was not sure. After examining a copy of the Civil Rights Commission Charge Affidavit (Mgmt.Ex. 2), he acknowledged that he had applied for the position on April 4 and that the Personnel Director had resigned before that date. He conceded that the Personnel Director held no official capacity in the hospital on June 28, 1974. On cross-examination, he said that the former Personnel Director was in the hospital on that day, that he made his "runaround by the Superintendent" remark, and that he (Fluckers) concluded for the first time that he would not be paid. He formally grieved on July 1.

Grievance H-397 should be denied and dismissed.

Analysis: During the hearing, the Parties agreed upon several points. The Fluckers Grievance was properly in arbitration under their governing documents and practices. Management, however, reserved the right to present evidence and testimony about the tardiness in filing. The hearing should proceed without a formal stipulation. Witnesses were to be sworn but not separated. There was no objection to publication of the report and decision of the Arbitrator. Findings of the Arbitrator were to be made on or before February 8, 1975 (within thirty days of the hearing). If granted, the award would be implemented within thirty days of its receipt. (Jt. Ex.G)

Positions of the Parties--which were presented in some detail in the preceding sections of this document--need not be restated here.

The following points appear to cut to the heart of--and provide the answer for--the issue in the subject grievance:

I. Certain facts were not in dispute. The aggrieved was classified as an Activity Therapist II. He had conferred with the Superintendent about enrolling in the course offered by Ashland College. He had been encouraged by, and given approval from, the Superintendent to do so and then told to discuss it with the Geriatric Administrator. The Supervisor and Fluckers agreed that he would attend classes on Mondays and Tuesdays and would work a regular shift Wednesdays through Sundays. Fluckers paid for his own tuition and costs for the class. During an extended January-December illness, he learned that another Activity Therapist II had taken the course one year earlier; that he, too, attended classes on two days; that he worked three days; and that he was paid for forty hours per week. Having returned to work, he asked that he be treated in the same way as the predecessor and that he be paid for the October-December overtime hours. After several conferences, his schedule was modified; he went to class on Mondays and Tuesdays, worked from Wednesdays through Fridays, and was paid for forty hours. He continued to ask the Timekeepers and others--including the Superintendent--for his retroactive pay. Having decided that it would not be paid otherwise, he grieved formally on July 1, 1974.

II. A thorough review of the evidence and testimony show that several persons deserve commendation for their performances in the subject case. They are:

A. The Timekeeper--who kept accurate records; who reported to her supervisor that one of the employees was clocking in and out seven days per week; who repeatedly tried to get instructions from responsible officials as to how to handle it; and who refused to authorize payment of State money until she was given clear, proper and written instructions.

B. The Geriatric Administrator--who was not asked for his opinion and advice before the Superintendent approved Fluckers' request; who was told that the Superintendent had already approved; who, in retrospect, probably should have gone directly to the Superintendent to explain his point of view and contemplated action; who, instead, switched the normal work days so that the course could be taken on Mondays and Tuesdays and the employee would work on Saturdays and Sundays; who refused to change position and story under direct and indirect pressures from above; and who raised no fuss when the schedule was again altered in February.

C. The Chief of Labor Relations for the State Department and the present Personnel Director of Hawthornden--who, instead of pressing for outright dismissal of the grievant because it had not been filed within their interpretation of the ten-day clause; who must have realized that there were other deadlines which had not been met by Management and Union officials; and who asked that the case be heard on its merits.

D. The Aggrieved--who believed that he had not been given equal treatment; who patiently but persistently sought relief; who counted on promises from persons in responsible positions that he would be paid the money he claimed; and who, again and again, emphasized that his grievance was as much or more a matter of principle as it was of money.

III. On the other hand, there were other performances which left something to be desired:

A. The Superintendent--who did not tell Willie Fluckers first to get approval for registration in the course from his supervisor; who, instead, gave approval and then told Fluckers to discuss it with the Geriatric Administrator; who was unwilling to put in writing the words he, apparently, said to others; and who delegated his responsibility to the Assistant Superintendent, as if to wash his hands of the case.

B. The Assistant Superintendent--who, when delegated to responsibility for hearing the grievance at step three, made his decision on what he would have done had he been Superintendent in October, 1973; who gave little, if any, weight to what the Superintendent had done for and promised the Aggrieved and said to other administrators; who was unaware of, or unimpressed with the real significance of the February alteration in Fluckers' schedule; and who, though sincerely, may have allowed himself to become an escape mechanism for someone else.

IV. This table will provide some comparisons and contrasts and will put the previous and subject cases in helpful perspective:

	Past Practice Case	Aggrieved
Classification (When enrolled in Chaplain's Course	Activity Therapist II	Activity Therapist II
Faith	Eastern Orthodox	Protestant
Clergy Qualifications	Priest	Ordained Minister
Supervisors (Including Superintendent)	All White	All White
Race	White	Black

Persons who are experienced in labor relations and who have been directly involved in weighing changes of racial discrimination are familiar with outright and subtle racism. While there was no direct charge of race discrimination, small parts of the testimony and Management's Exhibit 2 left the feeling that it was along the periphery.

It should be made very clear, however, that the decision in this case will not be based on a charge of discrimination.

V. The sole issue in the Fluckers Grievance is whether the Aggrieved should or should not be paid overtime for the hours he worked on Saturdays and Sundays between October and December, 1973.

The preponderance of evidence shows that in the past-practice case of the Priest--who was classified Activity Therapist II--someone in Management decided that the Ashland Collage Course was job-related and that his schedule should be two days of classes and three days on his classified job. The evidence also shows that, after the precedent case was brought to their attention, the Superintendent and Personnel Director had the Fluckers (Activity Therapist II) schedule similarly adjusted. While some persons have questioned the wisdom of such a decision, no one has contended that the Superintendent exceeded his authority.

This Arbitrator concludes that the decision which made sense in February, 1974, also made sense in October, 1973. All of the facts were relevant at both times.

When the officials tried to reach an agreement with Fluckers re his request for retroactive pay, they were acting within their bargaining authority and responsibility. If they hoped that with the passage of time, he would drop his claim, their action was permissable and understandable. Such was not to be, however. Willie Fluckers exercised his rights under the governing documents and grieved.

Decision: On the basis of all the evidence and testimony, Grievance H-397 (Willie B. Fluckers) is sustained. He shall be made whole--for the Saturday and Sunday overtime hours as shown by his October-December, 1973, time cards--in accordance with the provisions of Department of Mental Hygiene and Correction, Executive Order P-1, November 15, 1971, Art. XII, C, 4, e (Joint Ex. G); of Civil Service Laws (Sections of Revised Code Relating to Personnel Procedure), March, 1972, Par. 143.11 (Joint Ex. E); and of other legal governing documents.

Cleveland,
Cuyahoga County
Ohio
February 5, 1975

Respectfully submitted,

/s/ Dallas M Young
Arbitrator

B. In the Matter of Arbitration
between

The City of Champaign
Illinois

and

Illinois Public Employees
Organizing Committee of the
American Federation of
State, County, and Municipal
Employees, AFL-CIO,
Local 1960, Champaign, Ill.

Opinion and Award

Paul F. Gerhart,
Arbitrator

Appearances:

For the City of Champaign:
Paul D. Walker, Director of Personnel
Arthur Dillman, Superintendent, Department of Public Works
Stephen Schaefer, City Engineer
Kurt P. Froehlich, Assistant City Attorney

For Local 1960:
Harold Benedict, International Representative, AFSCME
Dan Roney, President, Local 1960
Bernard Bradley, grievant

John L. Smith
Garry Robinson
Don Patterson
Oris Ward

Background

The parties--the City of Champaign (hereinafter referred to as the City) and American Federation of State, County, and Municipal Employees, Local 1960 (hereinafter referred to as the Union)--were unable to resolve a dispute involving the disciplinary suspension of Bernard Bradley through the grievance procedure under the terms of their agreement.

Pursuant to Article XVII of their agreement dated July 8, 1974, the parties submitted the dispute to the undersigned arbitrator for final and binding determination.

Whereupon, the undersigned arbitrator convened a hearing in the City Council Chambers of the City Building, Champaign, Illinois, on December 17, 1975, at 9:15 a.m. Both parties were afforded the opportunity to present evidence and to make argument at that time.

Facts

1. Sometime prior to September 18, 1975, the date of the incident out of which this dispute arose, the City and the Champaign Park District (a special district completely independent of the City) reached an agreement whereby certain "engineering and heavy equipment work" would be performed for the Park District. The proposed agreement was outlined in a letter dated March 27, 1975, from the general manager of the Park District to the city manager of the City. That letter provided, in pertinent part,

> I met with Steve Schaefer and Art Dillman the other day to discuss the engineering and heavy equipment work that we would like to do with the City this spring. In order to set a procedure for doing this, I told them that I would write you a letter requesting permission to use the City equipment, with City operators, and the Park District would pay them the overtime rate during those times they are available. Each pay period I will have our accounting staff prepare a memo showing those City employees who worked for the Park District, the number of hours they worked, and the amount paid. I will send this to you and/or Mr. Art Dillman.

> We will proceed on these projects as equipment and personnel are available from the City. When we receive your approval, I will have Mr. Dorsey work the details out with Mr. Art Dillman or whoever you direct.

2. A few days before September 18, employees of the City street maintenance division were afforded the opportunity to sign up for work pursuant to the above agreement between the City and the Park District. At that time, a number of street maintenance division employees volunteered to work on the evening of September 18.

On this and on previous occasions when work had been performed for the Park District, only employees of the City street maintenance division were afforded the opportunity to sign up for such work and only such employees actually performed such work.

3. Mr. Bradley, the grievant, who had been a City employee for approximately three and a half years and who worked as a truck driver in the street maintenance division was among those who volunteered for work on September 18.

4. On September 18, about 4 p.m., a number of City employees including Bradley, completed their regular shift for the City and proceeded to a site north of Champaign. There, they loaded dirt for transfer to the Robeson Park site on Duncan Road. Mr. Dillman, City Superintendant of Public Works, directed the work of these employees and no other person had any supervisory responsibility as regards the performance of the employees.

Only City equipment was used in this operation. It included four trucks--two large tandum trucks and two smaller, one-and-a-half to two-ton trucks. Bradley drove one of the smaller trucks (#89) and Mr. Robinson drove the other (#60).

5. Dillman remained at the dumping site until each driver had made his initial trip to the dumping site and gave each driver, individually, instructions as to how to enter the site and back to the dumping location at the northeast corner of the site.[1] Dillman then left the site to attend other business.

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[1] There is some dispute as to the exact instructions given as to whether they were in the nature of an order or merely a suggestion. It is unnecessary for the arbitrator to resolve this dispute in order to reach a decision in the case. There is no dispute that Dillman was present at the site as each driver entered on his initial trip and that Dillman did discuss the procedure for entering and dumping with each of the drivers.

6. About 6:30 p.m., the two smaller trucks driven by Robinson and Bradley approached the dump site on their final trip of the evening. Robinson, in #60, entered through the gate at the west side of the site, first. He turned left (north), proceeded approximately 50 feet, then turned 45 degrees to the left again so that #60 faced northwest into the northwest corner of the site. From that point Robinson prepared to back #60 in an easterly direction to the dump location in the northeast corner of the site, approximately 200 feet to this rear.

In the meantime, Bradley, driving #89, had entered the gate immediately behind Robinson. He followed Robinson to the north but as Robinson pulled to the left into the northwest corner, Bradley turned to the right (east), passing the rear of #60. He traveled east for 100 to 150 feet. Then, he made what was nearly a U-turn to the right and prepared to back into position for dumping. At this point, #89 faced in a southwesterly direction, angled slightly but facing nearly into the rear of #60.

By this time, Robinson in #60 had begun to back from the northwest corner of the site in an easterly direction toward the dump location. Although Robinson had apparently assumed the path to the dump location was clear. Bradley observed #60 backing toward him but initially assumed Robinson was merely "horsing around," that Robinson was aware of his presence in #89 and that Robinson would stop. After a moment, he realized Robinson was not about to stop. He then blew his horn, but, because of a loud muffler, Robinson did not hear it. Robinson proceeded to back #60 into the right front of truck #89. Approximately $500 damage was sustained by truck #89, which damage was paid for by the City's insurance carrier.

7. Since Bradley had not followed the procedure for entering and dumping which had been outlined by Dillman,[2] and as a result of the damage to truck #89, the City determined that Mr. Bradley had been negligent in the operation of his truck and suspended him from his employment for a period of ten work days. Notice of the suspension was dated October 9, 1975.

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[2] Although there is some dispute as to the precise method outlined by Dillman, there was no dispute that the maneuver by Bradley, described above in paragraph 6, did not conform to Dillman's outline.

8. On October 16, 1975, the Union grieved the suspension on the grounds that it was "without reason." The grievance read, in part, "Reason for suspension, I supposedly caused accident in City Truck while working for Champaign Park District, but #89 was sitting still changing gears when wreck occurred. I wasn't moving when #60 backed into my truck."

9. All employees involved in the operations on the evening of September 18, were paid directly by the Park District. The rate of pay was one and a half times the rate required in the agreement between the City and the Union for the respective employees.

Positions of the Parties

The City contends that while Mr. Bradley was paid directly by the Park District for his work on the evening of September 18, he was still a City employee at the time of the accident and subject to its disciplinary action; that Mr. Bradley had been given specific instructions as to how he was to proceed at the dumping site; that he did not carry out these instructions and, on the contrary, was negligent in his operation of truck #89; and that this negligence contributed directly to the damage to truck #89.

The Union contends that since Mr. Bradley was paid by the Park District for the work being performed at the time of the accident, he was not, at that time, a City employee, so, regardless of the merits of the case, he was not subject to discipline under the agreement between the City and the Union; that the City has not shown the grievant to be guilty of negligence; and that the City was arbitrary, capricious, and discriminatory in assessing the grievant a ten-day suspension.

Pertinent Provisions of the Labor Agreement

ARTICLE XVI
DISCIPLINE AND DISCHARGE

16.1 Discipline. Disciplinary action shall include only the following:
Oral reprimand
Written reprimand
Suspension (notice to be given in writing)

Disciplinary action may be imposed upon an employee for cause.

Any disciplinary action or measure imposed upon an employee may be processed as a grievance through the regular grievance procedure.

If the employer has reason to reprimand an employee, it shall be done in a manner that will not embarrass the employee before other employees or the public.

ARTICLE XVII. GRIEVANCE AND ARBITRATION PROCEDURE
Step IV. If the grievance is still unsettled, either party may, within fifteen (15) days after the reply of the City Manager is due, by written notice to the other, request arbitration.

The arbitration proceeding shall be conducted by an arbitrator to be selected by the Employer and the Union within seven (7) days after notice has been given. ... The Arbitrator shall be requested to issue his decision within thirty (30) days after the conclusion of testimony and argument. The Arbitrator's decision shall be binding.

The Issue. The arbitrator has determined that the issue to be resolved is whether the suspension of Bernard Bradley from October 10, 1975, to October 27, 1975, was for cause according to Article XVI of the agreement.

Discussion. The first question which must be resolved is whether the City had the authority to discipline Mr. Bradley. The fact that the employees were paid by the Park District, rather than the City, for their work on the evening of September 18, is not dispositive. It is well established in industrial jurisprudence that an employer may, under certain circumstances, discipline an employee for actions taken by the employee while not in a pay status if the actions are work related. The alleged conduct here is clearly work related.

The Union argued that had there been an injury, the Park District would have been responsible for workman's compensation payments. However, no evidence to support this contention was adduced. Furthermore, even if the Park District were determined to be the employer for purposes of a workman's compensation claim, such a finding would not be determinative of the question here.

The question, who had the authority to discipline, is the same as the question, who had the authority to control. The letter from the general manager of the Park District indicates, "We will proceed on these projects as equipment and personnel are available from the City," clearly implying that the City would control when its equipment and personnel would be used on the Park District's projects. Second, Art Dillman, City Superintendant of Public Works, was responsible for carrying out the details of the operation. Although he was also paid by the Park District, there is no question that his first responsibility was to the City, and that, in the Park District general manager's letter, he was viewed as the City's representative. Moreover, Dillman was the only supervisor involved in the operation. Hence, it is reasonable to conclude that the City, through Dillman, controlled the operations during the evening of September 18.

The fact that the damage was sustained by a City vehicle is also relevant. Given the circumstance that an employee is working under City control, it seems not unreasonable for the City to take disciplinary action against such an employee if it could be shown that the employee had caused damage to City property through negligence, even where, as here, the employee was not in a pay status with the City at the time of the damage.

Aside from the question of control, the overtime rate specified by the labor agreement between the parties was used to compensate the employees who worked on the evening of September 18. The use of this rate clearly implies that the parties viewed the work for the Park District as an extension of the workday for the City rather than the commencement of work for an entirely new employer. Moreover, the method by which the employees obtained the work resembles more closely a means of allocating overtime opportunities among employees than of hiring new employees. It is noteworthy that only City employees were afforded the opportunity to obtain the work.

My conclusion is that the arrangement between the Park District and the City was merely an agreement to contract out certain Park District work to the City. The somewhat unusual arrangement to have the City employees paid directly by the Park District appears merely to be an effort to simplify bookkeeping. In no way did it abrogate the labor agreement between the parties or reduce the authority of the City to discipline for cause under that agreement.

Turning to the merits, it was clear that the method for entering the dumping site and backing to the dump location prescribed by Dillman was sensible, safe, and simple. Bradley testified that he had no reason to disagree with the method, as he understood it, at the time Dillman discussed it with him. He also testified that, on the ocasion of the accident, he had not followed the method but had proceeded as has been described above (Facts, para. 6), because it would save time and gas. This explanation for his deviation from the prescribed method for dumping was not persuasive. The time and gas involved would not have been significant. Ordinarily, an employee can be expected to have a much more compelling reason for disregarding the instructions of a supervisor, particularly when he has previously acceded to them, even if they are merely in the form of advice.

Other testimony substantiates a conclusion that Bradley was in a hurry. Several motives were suggested: (1) He may have been racing with Robinson. (2) Since it was the last trip of the day, he may have simply been in a hurry to get back to the garage. (3) Mr. Patterson, an employee at the site where dirt was being loaded, testified that Mr. Bradley had said before leaving on his last trip that he (Bradley) was not sure if he could make another trip but that he would try. Any of these would explain his haste, but to establish the motive is unnecessary.

Dillman testified (and his testimony was not refuted) that both Robinson and Bradley were traveling "a little too fast" as he observed them approach the dump site and that Bradley was "a little too close" to Robinson. Bradley, himself, testified he was only 15 to 20 feet behind Robinson as they entered the dump site. Whether it is due to horseplay or overeagerness, Mr. Bradley has apparently displayed a pattern of somewhat hasty or hurried performance of various tasks assigned to him in the past. Although no discipline was involved, Dillman testified that he had "called down" Bradley on several occasions for operating equipment too fast. Bradley corroborated this, at least in part.

As Bradley entered the dump site immediately prior to the accident, it is reasonable to assume that he should have been able to anticipate the actions of Robinson, i.e., that after pulling into the northwest corner of the dumping site, Robinson would back to the northeast corner to dump. However, Bradley chose to pass behind Robinson's truck and position himself directly in the path Robinson was about to take. Such an action, under these circumstances, reflects poor judgment, was careless, and can properly be characterized as negligent. That Bradley did not intend to cause an accident is no doubt true. Such an intent is not necessary, however, to sustain a charge of negligence.

Finally, attention must be directed to the Union's assertion that the City was arbitrary, capricious, and discriminatory in disciplining Bradley. With only two exceptions, one of which involved the grievant, no employee had ever been given more than an oral reprimand following a chargeable accident. The Union suggested that the ten-day suspension assessed against Mr. Bradley in this case may have had some connection with his role as a member of the Union negotiating committee.

The record does not support the Union's assertion. In addition to the grievant, four present or previous City employees could be identified as having had chargeable accidents. One of these had had multiple accidents and was discharged. None of the remaining three has had more than one accident. Bradley has had one previous accident with a City truck. On that occasion he went through a stop sign and was struck by a private auto. Although there were mitigating circumstances (the stop sign was apparently partially obscured), he was reduced in pay for an indefinite period. Mr. Bradley did not appeal that disciplinary action and testified at the hearing that, at the time, he felt that it was proper. Under these circumstances, a ten-day suspension does not appear arbitrary, capricious or discriminatory.

The evidence adduced at the hearing establishes persuasively that the grievant exercised poor judgment in the operation of his truck on the evening of September 18, that his actions were negligent, and that such actions led directly to the accident that evening. Further, it has been shown that the agreement between the parties was in full force and effect at the time of the accident, including that portion of the agreement which gives the City the authority to discipline employees for cause. Finally, the specific discipline assessed was not arbitrary, capricious, or discriminatory.

Award. The suspension of Bernard Bradley from October 10, 1975, to October 27, 1975, was for cause according to Article XVI of the agreement between the parties. The grievance is denied.

Dated: January 9, 1976 /s/ Paul F. Gerhart
Arbitrator

INSTRUCTOR'S
MANUAL

LOCAL POLICY CONSIDERATIONS

Prepared by
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Module Number Six
of
LABOR RELATIONS FOR
MANAGERS OF SMALL AND
MEDIUM-SIZED CITIES
Package VIII

Developed by

SCHOOL OF MANAGEMENT
CASE WESTERN RESERVE UNIVERSITY

THEODORE M. ALFRED, PRINCIPAL INVESTIGATOR

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MODULE VI

LOCAL POLICY CONSIDERATIONS

The purpose of this module is to investigate some local policy considerations which bear heavily on labor-management relationships. The major consideration covered is that of public finances (Class 1). Further coverage of public finances, as well as of other policy considerations, is provided through presentations by selected class participants (Class 2). The topics in the module are the relationships between collective bargaining and each of the following: the level of public expenditures, sources of revenue, allocation of public expenditures, productivity, and political accountability. In all instances, the topics center around fiscal ramifications of collective bargaining in each of these areas.

Resources Required

The instructor should be knowledgeable in the field of public finance and collective bargaining and familiar with leading a seminar or discussion-type class. Also, the individual should be familiar with finances and negotiated settlements in the local geographical area. It is particularly helpful if this session can be conducted by a knowledgeable and experienced public administrator or consultant. The majority of the questions and answers in the sessions that occurred revolved around applied practical questions of the, "How do you proceed?" kind.

MODULE VI

THE ROLE OF PUBLIC FINANCE IN COLLECTIVE BARGAINING

I. Objectives

- to describe the role of public finance as it relates to collective bargaining in local government
- to encourage participants to look introspectively into their own municipalities' collective bargaining and budgeting programs

II. Instructor's Note

The class consists of lecture and discussion. In terms of the lecture outline, the class is split into two 1½ hour segments. The first segment centers on how collective bargaining pertains to the level and allocation of public expenditures and the sources of revenue. This leaves the second segment for coverage of productivity as it relates to collective bargaining and the entire question of political accountability and budgeting. The beginning parts of the first segment are lecture, with several opportunities for questions and discussion based on the experience of the participants. During the last part of the first segment and most of the second segment, the instructor should rely heavily upon participant discussion, attempting to present and elicit local examples to illustrate the points being made. Class involvement is critical during this time.

Suggested times for each of the topics in the first and second segments are indicated on the Lecture Content Outline. While the time adds up to a total of 3 hours, it is likely that each 1½ hour segment could usefully be expanded to cover a full class session of 3 hours, allowing more time for class discussion and consideration of specific problems in the participants' municipalities.

Be sure to make assignments for presentations at Class 2 of this module before the end of Class 1.

III. Lecture Content Outline

I) Developing Financial Knowledge for Bargaining (30 minutes)

- A) Understanding the Community
    - community finances
    - tax base
    - economic composition
- B) Data Preparation for Negotiations

II) Determining Bargaining History of Community (15 minutes)

- A) Stance of Elected Authorities
- B) State and Local Laws
- C) Negotiated Settlements in the Area

III) Discussion of Sources of Revenue (45 minutes)

- A) Types of Revenue
    - impacts on community
    - possibility of new sources
- B) New Sources
    - community response
    - ability to initiate
- C) Difficulty in Collection of Revenues
    - examples of sources
    - community involvement in tax increases
    - impact of prospective tax increase on negotiations

(End of first segment)

IV) Productivity and Its Measurement (45 minutes)

- A) Personnel Costs
- B) Determining Essential Services and Productivity

- C) Utilizing Productivity during Negotiations
- D) Utilizing Outside Labor Forces

V) Political Accountability (45 minutes)

- A) Collective Bargaining as Part of Budgetary Process
- B) "Selling" Items to Elected Authorities and Union
- C) Impact of Arbitration on Accountability

NOTE: This outline is included in the Student's Manual.

Module VI - Class 1

The Role of Public Finance in Collective Bargaining

(First Segment)

I. Developing Financial Knowledge for Bargaining

A) Understanding the Community

To be successful in negotiations with public employee groups a negotiator requires a thorough knowledge of the community in which negotiations are to take place. Inherent in this understanding is knowledge of the community's financial structure. This can be achieved in many ways. First and foremost is reliance upon planning agencies that serve the community. A second way would be maintaining close liason with other public agencies within the community; i.e., Board of Education, Park Districts, County Agencies, and the like. Another important facet of this data base is an understanding of the tax base with which one is dealing. This relates to our earlier comment on socioeconomic structure; however, understanding requires fact gathering in depth. One must be thoroughly conversant with the forms of taxation used within the community and the forms of taxation the community is capable of using if they are not already utilized. One must have a thorough knowledge of the amounts of money collected within each category of tax. An example is the property tax. Is there a ceiling on the tax in the community? If so, what is that ceiling? What is the amount of tax actually collected? How much does each mill of property tax within the community generate? Ideally, each form of taxation utilized by the community should be analyzed within this context.

Lastly, one must thoroughly prepare data on the economic conditions within the community including business prospects as well as forecasted growth patterns.

B) Data Preparation for Negotiations

We have noted several types of knowledge needed for negotiations. Now let us consider the collection of data and the sources that are used in obtaining the necessary information. Community finances are a very difficult problem at times. In order to be totally conversant in this matter, one must undertake a historical study to ascertain what types of financial conditions existed in the community at least five years prior to negotiations. Furthermore, one should conduct a very thorough analysis of all prior labor agreements to see how they relate to the present labor agreement as well as to other agreements in your own community and in other communities. This analysis can be made through your own archives as well as by contacting other communities in your general vicinity. If for some reason others seem reluctant to assist you in this matter, there is generally a state agency where all budgets must be filed at the end of each fiscal year. This information is public information and can be utilized for this analysis. A community tax base should be compared historically and projections for the future arrived at. Further, this base can easily be compared with other communities and political organizations within the area of your negotiations. Probably the best source of information is the documents prepared by either the state or local Chambers of Commerce. Of course, these sources vary from community to community and from area to area. However, a discussion of the tax base is mandated by your Federal agencies when you request funds for planning for community development and therefore such data on other communities should be available to all interested parties.

The analysis of the tax base should include all applicable state and local laws so that one knows at all times exactly what taxes are potentially available. It is very embarrassing to be in negotiations and state that there are no funds when, in fact, the other side knows that a form of taxation that is available has yet to be levied by your community. As will be discussed in later portions of the training module, there are times when certain taxes are politically unpopular and therefore are not truly available. That is not to say that you should not be aware of the tax at this stage of negotiations. It is imperative that, upon entering negotiations, complete homework has been done and files concerning finances, taxes and community economics created.

Lastly, in this portion of your planning you must work hard at acquiring an understanding of the economic composition of the community and its surrounding environment. This economic study should include available housing, where Public employees live, how they compete in the open market with other employee groups, and how they compete with workers in other industries, private and public, within the area covered by the community. One should go as far as to find out, if possible, how your negotiating employees see themselves in the socioeconomic structure in which they live. It is a difficult job when the employees one is negotiating with think they have one of the dirtiest, least desirable jobs and therefore want extra compensation for doing someone else's dirty work. Unemployment levels should be understood because they will influence the bargaining power of either party to negotiations. These items must be researched prior to the beginning of negotiations so that one has a firm foundation from which to work when discussing relative roles, life situations, and lifestyles during the course of labor relations in the public sector.

II. Determining Bargaining History of Community

We will now go beyond the earlier discussion in order to cover a number of political and legal questions related to public finances.

A) Stance of Elected Authorities

A collective bargainer must be well informed about the elected authorities of the community including their stance on collective bargaining itself. If, as representative of a city council or township board, you take a position against collective bargaining and unions while the authorities you represent favor them, then you are not in tune with the environment in which you are bargaining. It is imperative that you understand the authority given you by your superiors and their position on the issues. Consequently, one must maintain an open line of communications with the relevant legislators and administrators. When a collective bargaining session is concluded one must immediately prepare a concise and complete memo and send it to the parties you are representing. They should be kept abreast of all items being discussed since their role will be to make a policy decision based upon the data provided them. Further, it is extremely helpful to have pre-negotiating sessions with the elected representatives to find out what outcome they want to see from the collective bargaining process, whether a strengthening of the union or a weakening of the union, reserving greater management rights or lessening management rights and turning them over to the union, or large pay increases, or low pay increases. These things should all be predetermined prior to entering into negotiations through a series of sessions with the elected officials, so that the need for tax dollars can be ascertained.

B) State and Local Laws

A thorough study of all state and local laws pertaining to collective bargaining--especially those bearing on hours of work or other constraints on productivity--should be undertaken prior to entering into negotiations as well as an updating of this information during the course of negotiations. It is extremely important to know exactly what legal latitude you have during the course of negotiations. If at some time a problem arises that you are not sure of, simply state that you are unsure and will have to study it or discuss it with your solicitor or law director. It is crucial that you know your legal limitations and powers before making commitments in negotiations. At times these may be difficult to define as they relate to financing because often there are numerous laws relating to how money can be raised or spent.

C) Negotiated Settlements in the Area

When preparing for negotiations, one must study the negotiated settlements in other communities located within your economic area. We mentioned earlier that one must have a knowledge of the economic characteristics of the community. Here a detailed analysis of comparable data must be made. In this study you should include all economic factors of the local area in which your community lies. In general, you do not need data from other geographical areas. It is not true, however, that you are competing only with other political jurisdictions for employees; you are also competing with private employers in the area of your community. If there is a shortage of employees for a local steel mill which offers higher wages, you can expect some of your employees to seek jobs there. Conversely, if the industries in your particular area are low-wage, you will have more applicants for each job available within your organization. A thorough knowledge of the negotiated settlements in your area enables you to cite them during negotiations. Even if these other communities are not similar to your own, your community will be competing with them in the labor market.

III. Discussions of Sources of Revenue

Let us now list the types of revenue available to communities in the local area. We will go from the most common to the least common forms of revenue. (List and discuss the types of revenue).

A) Types of Revenue

We must consider the impact of various revenues upon the community, whether a tax is regressive, neutral or progressive in effect. Each of the forms of revenue listed should be measured by this criterion. (Do so.) Other important dimensions are ease of collection, adequacy of revenues, and the impact these forms of taxation would have. Some taxes, while productive of revenue, are difficult to collect and become almost nuisance taxes because of the difficulty of reporting by taxpayers. (Discuss each revenue type with regard to these dimensions.)

Questions of revenues and taxation will certainly arise during the course of bargaining. When increases are gained by the unions, they must be met by revenues. These revenues will be collected from taxes and, to amplify on the points we discussed earlier, you must be prepared to show in detail what is available, what it will provide, who will be hurt, who will be helped, how difficult or how easy it will be to collect these taxes, and how the workers on the job will be affected.

B) New Sources

Now we extend discussion of the problem of estimating the community's probable response to increased taxation. What will be the union's role if new sources of revenue are being considered as a result of "selling" added taxes to the community? (Have the class discuss this question and those which follow.) What will the township or city council's role be in selling a new source of revenue to the public? Will some of the sales difficulties be borne by the unions or employee groups negotiating for higher salaries? One must be able to ascertain the ability of the governing body to initiate a new source of income. What are the relevant state laws? Would a joint lobbying effort by the governing body and the employee groups be in order?

C) Difficulty in Establishing New Sources of Revenue

Lastly, you should analyze difficulties in passing new taxes or tapping previously unutilized revenue sources. (Again, have the class discuss each of the following questions.) What are some new revenue sources which you consider to be feasible? How can you secure community involvement in a tax increase? Suppose you are in a community comprised largely of elderly and retired individuals; what taxes would severely affect them and how would they react.

Most important, for purposes of this discussion, is the impact of a proposed tax increase on negotiations. Saying taxes must be levied in order to give a wage increase may be a strategy that leads to a breakdown in negotiations. On the other hand, the union may agree to a wage increase which is conditional, in part, on successful passage of a tax increase. Communities and unions differ with regard to such cooperation. What would you expect to happen in your municipality?

The Role of Public Finance in Collective Bargaining

(Second Segment)

IV. Productivity and its Measurement

(The following is a list of issues and questions which the instructor should go over with the class.)

We will now consider the steps which labor relations administrators should take to measure productivity and determine service provision alternatives.

A) Personnel Costs

Determine the types of personnel hired by your community. What does it cost to maintain them, in direct salary, fringe benefits and administrative overhead? What is the relative worth of the individuals in these positions? How do these positions relate to other jobs within the community?

B) Determining Essential Services and Productivity

Priorities should be assigned to all services delivered by the local government to the community. Items the community has said it wants and has not yet funded should be ascertained, as should methods of paying for them. A cost-benefit analysis should be performed for any additional services being considered, so that one can compare needs for services, costs of delivering them, and benefits derived from same. (The instructor should perform such an analysis, drawing on the class for cost and benefit elements to be considered.)

C) Utilizing Productivity During Negotiations

Service levels are frequently negotiated in labor agreements. The interface of budget preparation, productivity, service levels and negotiations is a complex one. What examples of negotiating over productivity can you give from your own experience? (The instructor should select a specific service and outline in depth how one negotiates for the delivery of this service.)

How was productivity affected by the negotiations, how was the level of service affected, and how did these matters relate to the annual budget and appropriation?

(Negotiating for expansion of services should also be discussed.) Have any of your municipalities expanded services or made trade-offs for services during the course of negotiations? Did this cost additional money or was the municipality able to make these trades at little or no cost in actual revenue?

D) Utilizing Outside Labor Forces

Lastly, you should consider the utilization of outside forces for community services and how this would affect the budgeting and negotiation processes. Can garbage collection be more effectively achieved by contracting with outside suppliers rather than using government employed individuals? This is a question that is being asked and answered nationwide and can be utilized as a labor negotiation tool.

In most instances a minimum of 70% of local government general fund budgets are a result of personnel costs. The only way in which these costs are going to be kept under control is through a complete understanding of the labor relations process as it relates to fiscal capacities of government. More specifically, discussions should be held among municipal officials concerning productivity and its impact upon labor relations and labor relations as it impacts upon the budget.

V. Political Accountability

This portion centers around political accountability as it relates to labor relations and how the budget impacts on collective bargaining.

A) Collective Bargaining as Part of Budgetary Process

An initial discussion should be held by the instructor demonstrating the inner relationships of taxation and public accountabilities. The increase of taxes or the imposition of new taxes is generally one of the stormiest incidences that can or will occur in local government. The fact that collective bargaining in today's local government scene has such a strong impact upon the budgetary process and is in fact the largest part of the budgetary process in local government must be recognized and dealt with. The instructor must discuss the fact that all too often collective bargaining is done in an isolated and rarified atmosphere almost as if it is totally divorced from the everyday problem of taxation and adequacy of revenues as they relate to the delivery of governmental services. The collective bargaining process must be brought out of the back room and into the world of reality as it relates to budget, finance and overall political accountability of elected representatives. This largest segment of local government cost must be put into proper perspective. Local government officials, both elected and appointed, must continually be aware of the impact that labor relations has upon revenue. The financial problems of major cities and their relationship to pension plans can be brought up as examples of these points. The New York City case was recently documented in a New Yorker article in the August 1, 1977 issue. The instructor should discuss the necessity of obtaining, for example, accurate actuarial estimates of the long run impact of negotiated pension agreements and the adequacy of future tax bases to cover costs.

B) "Selling" Items to Elected Authorities and Union

A carefully let discussion should be conducted at this point to show how a negotiator goes about selling items to both the elected representatives and the union negotiators, through the use of economic statistics and fiscal studies. It is advisable that the moderator prepare samples of items he may use in actual negotiations, things such as: checks showing cost of living and pay scales of public employees; graphs showing the relative worth of various jobs throughout the local economy; financial studies showing forms of taxation used within the community, levels of collection, and rates of increase.

These are merely a brief listing of the types of items the instructor must prepare for this discussion. The instructor should make clear how these items are to be used when preparing for negotiations.

C) Impact of Arbitration on Accountability

Lastly, the moderator must be prepared to lead a discussion on the effects of arbitration upon fiscal accountability of local community economics and labor relations. This discussion should center around arbitration, factfinding, mediation and other forms of legally required labor relations that are unnatural insofar as they are mandated and not mutually arrived at. Discussion should show case examples of arbitration in states where it is binding and/or where it is mutually agreed upon. This last item is very important at this time since more and more states in the country are mandating some form of arbitration and limiting the ability of public employees to go on strike. All types of impasse legislation should be discussed as they relate to the budget and the kind of effects they can have on a local community as it pertains to revenues.

MODULE IV - CLASS 2

PARTICIPANTS' PRESENTATIONS ON POLICY ISSUES

I. Objectives

- to acquaint students with actual financial and productivity problems faced by local municipalities.
- to analyze the procedures used by local municipalities to solve financial and productivity problems.
- to illustrate analytical processes for assessing specific financial/productivity procedures adopted by a municipality.

II. Instructor's Note

This 3 hour class session is comprised of presentations by course participants. The instructor, through prior contact with participants, should choose two or three whose municipalities have taken actions to meet a financial/productivity problem. Each individual chosen should conduct a study which chronicles the development of the problem and the actions subsequently taken by the municipality. Each individual should then make a brief presentation, followed by extensive questioning by other participants and the instructor. At the end of the session, the instructor should comment on the analysis that occurred during the class, discussing how similar analyses can be used by participants to evaluate their own municipalities' policies.

Choosing the Presenters and Topics. During the earlier parts of the course the instructor(s) should identify participants with particular experiences and expertise in the areas of finance and productivity. Module I, Class 1 (with its discussion of participants' experiences, strengths, and weaknesses) is not too soon to start the identification process. If a number of participants have had relevant experiences, the instructor should select just three individuals, utilizing one or more of the following criteria:

1) Success and failure. While people are more than willing to discuss successes, more can often be learned from failures. Both successes and failures should be presented to the class. Following the presentations, time should be spent analyzing factors which account for the differences in success.

2) Complexity of the issue. If the particular situation and remedies attempted in a municipality are highly complex, it would be better to develop that experience as a full-fledged case. (See Module VII.) The situations chosen for class presentation should be relatively straightforward in terms of relevant parties involved, procedures followed, and outcomes.

3) Capabilities of the presenter. During the early classes of the program the instructor can assess the abilities of various participants to present facts and viewpoints. While class members will generally be supportive of an individual who has problems making a presentation, it is clearly preferable to have an interesting, forceful, and even opinionated presenter.

Studying and Presenting the Experience. Those who are chosen to make presentations should meet individually with the instructor to determine what aspects of the situation are most relevant to the class. The presenters should then talk with those in their municipalities who were directly involved--union officials, administrators, public officials, interested publics--to accurately determine the sequence of events and the rationales guiding each party. The presenter should also summarize the relevant financial and productivity data for the periods before and after the change was introduced (or attempted). The above information should be put in concise written form (not more than two typed pages) for distribution to the class during the presentation. Each presenter should aim for a presentation of the events and statistics lasting no more than twenty minutes, the remaining time to be spent in discussion.

The instructor should review the presentation material prior to the class, formulating a number of questions to address to the presenter. The instructor should also pose issues to the class, such as the alternative procedures the municipal officials could have adopted and the likelihood of their success.

Post-Presentation Analysis. Following the two or three presentations, the instructor should discuss with participants how the presentations illustrated the [illegible] points made in Class 1. The instructor must note the various steps to follow: analyzing the financial situation and community climate, devising plans for improving productivity or increasing revenues, and implementing these plans. The instructor should also stress that analysis must occur after the plans have been implemented in order to judge the results. The presentations themselves, especially the use of before-after data utilized to judge success, should be pointed out as examples of how to analyze a recently-implemented plan.

INSTRUCTOR'S
MANUAL

SPECIAL CASES

Prepared by
Dallas M Young

Module Number Seven
of
LABOR RELATIONS FOR
MANAGERS OF SMALL
AND MEDIUM-SIZED CITIES
Package VIII

Developed by

SCHOOL OF MANAGEMENT
CASE WESTERN RESERVE UNIVERSITY

THEODORE M. ALFRED, PRINCIPAL INVESTIGATOR

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MODULE VII

SPECIAL CASES

An Overview: Many of the principles and practices which were introduced or suggested in the previous modules will be illustrated in the Special Studies which follow. The cases have been selected because of their diversity, yet there are numerous common themes.

The 1974 Elyria study is basically descriptive. By design, however, analytical and thought-provoking questions have been interspersed in context. In some instances, the questions have immediately preceded policy determinations. Elsewhere, they have provided excellent opportunities for Monday-morning quarterbacking. The in-depth report was based upon notes kept in preparation for, during, and after the collective-bargaining sessions. It was prepared by the Consultant-Negotiator for the City. (Dallas M Young, Professor of Labor Relations, Case Western Reserve University.)

The 1976 Sequel report on Elyria provides great contrasts. For numerous reasons, Council--which had been so deeply involved in 1974--delegated primary responsibility for handling negotiations to the Mayor and her Administrators. Through the use of vertical, parallel columns the major proposals and the actions thereon are placed in focus. Persons who wonder whether the FOP is or is not a labor union will be interested in the preamble and other articles of the 1976 contract. Responsibility for the preparation of this report was carried by Elyria's Assistant Director of Safety-Service (now Director) and his wife--both of whom had had extensive and valuable labor-relations experience in the private sector before entering public service. (Richard and Elizabeth Bergman were participants in the Case Western Reserve University project.)

What actions does a city government take when the residents have voted against an increase in its income tax from 1 to 1⅓%? The Cleveland Heights Study presents financial data on the immediate problems which faced the city under that circumstance. What did the City Manager recommend to the Mayor and Council? What decisions were made and effectuated? How did the citizens react? One thing was certain--the educational (sales or public relations) package which was developed and used prior to the second election was much more carefully prepared. Approximately 14,000 of 23,000 voters supported the increased tax in November, 1976. The framework for the Cleveland Heights Report was presented to the C.W.R.U. Project by one of the participants. (Irwin L. Silbert, Assistant City Manager. Detailed information was supplied by Robert A. Edwards, City Manager, Cleveland Heights, Ohio.)

MODULE VII. SPECIAL CASES

Class 1. Elyria, Ohio: Labor-Relations Developments in 1974

Class 2. A Sequel: Negotiations in Elyria in 1976

Class 3. Cleveland Heights, Ohio: Without An Increased Income Tax?

MODULE VII. CLASS 1

Elyria, Ohio: Labor-Relations Developments in 1974

I. Objectives

- to review, in some detail, the flow of decision making in municipal government.
- to appreciate the differences between bargaining in private manufacturing and in municipal government.
- to develop a feeling for the diverse and common involvements of elected municipal officers and the managers of the City's business.
- to study the unfolding developments as reported by the Consultant-Negotiator.
- to encourage Monday-Morning Quarterbacking about the decisions which were made and the actions taken.

II. Instructor's Note

Class No. 1 of this module should take three hours. Each of the students should have studied the case before coming to class. Some of them may have found points which illustrate concepts and principles to which they have been introduced in earlier modules. If so, these should be brought to the attention of the class. The many questions which have been interspersed in the context of the 1974 Elyria report should provide a base for discussion. Other questions, of course, will arise.

III. Lecture and/or Discussion Topics

- Background
  - Founder
  - Location
  - Rapid Growth
  - Types of Government
  - Employees
  - Unions
  - Management
- Preparation for Bargaining in 1974
  - Agreements Expire: Early Meetings
  - Should Elyria Use a Professional Negotiator?
  - The City's Bargaining Committee
  - Planning on April 16
- Collective Bargaining
  - With the FOP and the Fire Fighters
  - With AFSCME
- Ordinances and Resolutions
- Where Do We Go From Here?
- Appendix - The Data

MODULE VII. CLASS 1

Elyria, Ohio

IV. BACKGROUND

A. Founder. Heman Ely was, in fact, the founder of the city which was to be named after him. A Massachusetts land holder--of approximately 12,500 acres in the Western Reserve--he came to Ohio in 1816. He dammed the Black River (at a point some nine miles south of Lake Erie). He built grist and saw mills. In 1818, Ely became the first postmaster. Fifteen years later, Elyria was incorporated as a village under Ohio Law.

B. Location. Elyria is about thirty miles southwest of Cleveland. Both the Penn Central and the Baltimore and Ohio Railroads serve the city. Exit 8 of the Ohio Turnpike (Interstate 80) is within the city and a short distance to the west I-90 intersects I-80. Cleveland Hopkins International Airport lies between Elyria and Cleveland.

C. Rapid Growth. By the 1970's, Elyria was among Ohio's most rapidly growing cities. Having more than doubled it's population between 1940 and 1970 (25,120 to 53,427), it had reached beyond 65,000 by 1975. A blend of manufacturing, building and construction, transportation, and service industries provided employment opportunities.

D. Type of Government. The city is governed under a Mayor-Council charter. Eleven councilmen are elected for two-year terms--seven by wards and four at large. As Chief Executive, the Mayor is considered to be a full-time employee. His appointees include a Director of Safety-Service; an Assistant Director; and Directors of Civil Defense, Finance, and Law.

E. Employees. In May, 1974, the City of Elyria had 603 employees, of whom 480 and 123 were full- and part-time, respectively. By far the largest concentration of full-time workers was in the Fire (88) and Police (71) Departments. Smaller units included Sanitation (39); Street (25); Sewage Treatment (22); and Recreation (20).

F. Unions. Three organizations had represented city employees prior to 1974: International Association of Fire Fighters, Local 474; Fraternal Order of Police, Lodge 30; and American Federation of State, County, and Municipal Employees, Local 277. Resolutions governing Fire Fighters and the Police had expired on December 31, 1973. The Agreement with AFSCME ended on June 30, 1974.

G. Management. Labor-relations decisions were made by Council and/or Management (the Administration), depending upon the season. Immediately prior to and during collective bargaining sessions for new contracts, Council was both deeply involved and responsible for them. In some instances, negotiating sessions had been led by the Chairman, Finance Committee. On other occasions, the Director of Safety-Services had covered such responsibilities. Between contract negotiations, however, the Director of Safety-Services, Departmental Heads, and Supervisors handled them.

V. PREPARATION FOR BARGAINING IN 1974

A. Agreements Expire: Early Meetings. Technically speaking, the governing documents involving Elyria and the Safety Forces were neither agreements nor contracts. They were Council Ordinances/Resolutions which evolved after successful bargaining.

Following the November, 1973, elections of city officials, representatives of the Safety Department met with members of Council's Finance Committee. Fire Fighters Local 474 presented "contract" proposals on December 5. Even though the Fraternal Order of Police had had a similar meeting, a newly elected group of officers prepared a revised set of proposals. These were introduced at a regular Lodge 30 meeting and were unanimously adopted. They were presented to the Finance Committee of Council on January 14, 1974. The Fire Fighters requested: (1) a two-year contract; (2) a $1,500 across the board increase; (3) a $200 clothing allowance; (4) reduction of working hours from 56 to 52 per week; (5) dental care, extended coverage for retirees and widows; (6) a cost-of-living provision; (7) 3, 4, 5, and 6 weeks of vacation after 5, 10, 15, and 20 years of service; (8) an additional personal day; and (9) an increase in insurance coverage from $5,000 to $10,000 with continued coverage after retirement. Larger requests of the FOP included: (1) an 18-month contract; an 18% increase in base pay with no loss in longevity pay; (2) a $300 per year clothing and equipment allowance; (3) reduction of weekly hours from 40 to 36 without reduction of pay; (4) fully paid dental care; (5) a cost-of-living provision; (6) vacation improvements as requested by Fire Fighters; (7) an additional day off with pay on member's birthday; (8) overtime pay of $6.00 per hour or time off as requested by the employee; (9) an increase in the longevity formula from 20% to 25%; (10) shift differentials of $12 and $25 per week for second and third shifts, respectively; and (11) an accumulation of up to 180 days' sick leave.

Discussions about the city's use of a labor-relations professional in the 1974 negotiations--which had started before the above proposals were submitted--were accelerated therewith.

B. Should Elyria Use a Professional Negotiator?

Explorations. The three persons on the Finance Committee--with assurance of support by the Administration but without a formal resolution--took the initiative in finding a professional to whom they could turn. They, plus the Director of Safety-Service and the Finance Director, completed the search. They unanimously recommended that a contract be entered.

Authorized by Council. Ordinance No. 74-54 was passed on March 18 and authorized the Mayor to enter a contract with a professional negotiator at a cost not to exceed $4,000. Prior to the adoption of the resolution, the one Councilman who voted against its passage said:

> When I was first contacted about this possibility of hiring outside negotiators, I felt that possibly this might be a proper step forward. Since then I have given this a great deal of consideration, and now I feel somewhat negative about this proposed ordinance. I hope you will bear with me for a few minutes so I may explain my reasoning.
>
> First of all, I cannot justify in my mind using City monies to hire outside negotiators to negotiate against the very same people who pay city income taxes. This money, regardless of the amount, is their tax money and it does not set well with me to do this to these people. They pay dues to their union to represent them and it isn't fair to them to subsidize one group against another.
>
> Secondly, I think this is a slap in the face to the people of the City of Elyria. Members of Council were elected to represent the people for many reasons. One significant reason that stands out in my mind is the over-all intelligence of each member. Everyone of us has sufficient talent to contribute, that to me it is unnecessary to hire outside help to handle our negotiations.

> I believe that this is also a vote of no confidence to our finance committee. The Chairman of the finance committee has more than sufficient experience in this field that I cannot believe that he would support this ordinance 100%. For the last 2-1/2 months he has displayed uncanny wisdom in protecting the funds of the City of Elyria. I'm sure not one cent has been spent unwisely, or to put it more clearly, a pandora's box has no chance of springing up here, with this finance committee. . . .

C. Conferences with the Mayor and Council. Having previously received orientation information from persons on the search committee, the Consultant-Negotiator felt that it was important for him to confer with the Mayor and the Council.

He met with the Mayor on March 20. During the forty-five minute session, the Mayor provided additional background information and made several suggestions about the roles of Council and the Administration. The Mayor agreed to arrange a dinner-and-working meeting for council members. He also supported the request for a small, joint administration-council ad hoc committee, whose members would participate in planning and in negotiations. They would also provide the lines of communication with city officials.

Because of previous commitments by key persons, the dinner meeting was not held until April 9. Eight Council persons (including the dissenter on Resolution 74-54), the Mayor, two Administrators, and the Consultant-Negotiator attended. Among other topics reviewed and discussed were: (1) Developments to date; (2) Role and work of an ad hoc, collective-bargaining committee; (3) Final decisions to be be made by the Council and the Mayor; (4) Municipal employees and strikes in Ohio; (5) Calculations showing that the cost of the FOP proposals of January 14 would be about $3,600/man/year.

D. The City's Bargaining Committee included the Chairman and the two other members of Council's Finance Committee; the Directors of Safety-Service and Finance; the Solicitor; and the Consultant-Negotiator. Professionally, the Elyria contingent included an Attorney; a Bank's Financial Officer; a Broker; a Certified Public Accountant; a Controller; and an experienced Government Employee.

E. Planning on April 16 by the Bargaining Committee.

   1. Consultant's Report.

      a. On April 11, the Mayor wrote the Presidents of the organizations representing Elyria employees, and advised them of the appointment of the negotiator. He indicated that meeting dates would be set in the near future.

b. On April 1, Counsel for the FOP wrote that "my client has been patiently waiting since January 14, 1974 for a response to its twelve written proposals." The Consultant-Negotiator telephoned Counsel on April 11 and updated him on developments. There would be a written reply on or before May 1. Probable date for first meeting with FOP was May 7. That date was clear for him.

c. In a letter dated April 9--and received on April 10--the Staff Representative of AFSCME wrote the Mayor of Elyria as follows:

> In accordance with Paragraph 54 of the Agreement between the City of Elyria and Local 277 of the American Federation of State, County, and Municipal employees, AFL-CIO, this letter will serve as notice of the Union's intent to open negotiations on the provisions of the existing agreement.
>
> The Union's Negotiating Committee is prepared to meet with your office or designated representatives to begin negotiations on a new agreement. Please advise my office as to a mutually convenient date for the first meeting.

Paragraph 54 of the 1972-74 Elyria-AFSCME Agreement provides that:

> . . . it shall be effective as of July 1, 1972, and remain in full force and effect until midnight, June 30, 1974, and thereafter from year to year unless at least ninety (90) days prior to said expiration date, or any anniversary thereafter, either party gives timely written notice to the other of an intent to negotiate on any or all of its provisions.

Ninety days prior to June 30, 1974, would have been April 1. Reopening was requested on April 9.

d. Wage-Salary-Hours-Fringe Benefits. Data were limited. City files contained information from six cities scattered over Ohio. A check with the Northeast Ohio Areawide Coordinating Agency indicated that virtually nothing had been done toward compiling a central data base about labor relations in municipalities of the Greater Cleveland area. A survey of the cities which comprise Elyria's labor market may be needed.

2. Questions for Discussion.

   a. What is the appropriate labor market? Do we use data for the State of Ohio? For the five-county (NOACA) region? For Cleveland? For the Southwestern suburbs? For Lorain County--including Lorain, with a 1970 population of 78,185; Elyria (53,427); North Ridgeville (13,152); Oberlin (8,761); and LaGrange (1,074)? After all, Elyria requires employees to be residents of Lorain County, doesn't she? Would it be fairer and more reasonable to compare Elyria's rates and benefits with Lorain; Lakewood (70,173); and Berea-Brookpark-Middleburgh Heights (total population 65,546 and a single public school system)?

   b. What, if any, changes in the agreements would the city like to effectuate? Are there paragraphs or sentences which need to be clarified, tightened, or removed? If so, can they be identified? How soon? If not, why not?

   c. Who determines how much the city can afford to spend? Shall we turn to the Chairman of the Finance Committee and the Director of Finance when we need projected costs?

   d. What bargaining strategy should we use? Should we merely announce that Elyria will be willing to extend the present agreements for two years and that the burden of supporting any change is completely on the employee representatives? Should we merely announce at our first meeting, or before, that the city would be willing to extend the existing agreements for two years? Consequently, the responsibility for supporting any proposed changes rests on the unions? Or are we willing to weigh our agreements against those of other comparable cities for purposes of identifying where we are better, equal to, or worse individually or as a group?

   e. What is the city's attitude toward a strike? Did the one several years ago teach us to roll with the punches? Did we save money as a result? Did it cause us to resolve to use almost any technique to avoid another one? Can we depend on Ohio's Ferguson Law to end an interruption in services? Did we invoke its provisions last time?

What are the real costs of using the penalty provisions of that law? What impact did the recent strike in Elyria's public schools have on our thinking?

f. How should we deal with communication media? Should the bargaining sessions be open to newspaper representatives? Should one speak with them if approached? Should we expect one or more of the Unions to use the press?

g. What dates can we clear for the first round of meetings? How shall we proceed during the early sessions?

h. What was the meaning and interest of the $4,000 figure in Council's Resolution re the Negotiator? Was it an absolute limit? Or could the Financial Committee make a supplemental request if additional funds were needed?

3. By Consensus.

a. Data would be compiled for Elyria; Berea-Brookpark-Middleburgh Heights; Lakewood; and Lorain. These cities, to the west and southwest of Cleveland, would appear to be a reasonable and definable labor market.

b. We would try to get a single expiration date instead of two. Our objective would be to have it expire in the no-city-election year. This would mean two and one-half years for the Safety Forces and two for AFSCME. We should: check the educational package to see whether it needs tightening; check the health packages for savings which might be spent for improved total benefits; and keep alert for other changes which Management should request.

c. The Bargaining Committee should depend on calculations made by the Chairman of the Finance Committee and the Director of Finance. We should avoid general guidelines at this time.

d. The burden of proof and support should be placed upon the Unions. Look for ways to initiate improvements, if the opportunity arises.

e. The city is no longer afraid of the strike weapon. It would, however, hesitate to invoke the provisions of Ohio's Ferguson Law. Threats of walkout should be taken in stride.

f. Press representatives should be kept out of the bargaining sessions. We would not develop a regular reporting plan. Members of the committee who may be approached should exercise good judgment. The Consultant-Negotiator will not become involved in contacts with newspaper, radio, or television reporters.

g. Try to hold first meetings in Council Chambers on the following dates: Police, 7:30 p.m., May 7; Fire Fighters, 7:30 p.m., May 14; AFSCME, 7:30 p.m., May 16. The Bargaining Committee should meet one hour before the first meeting in each round--and at the same time on other dates, if necessary--in order to review developments and to plan strategy for the upcoming session. The Chairman, Finance Committee should preside at bargaining sessions. He would turn to the Negotiator for first inputs. Our team would call for recesses and caucuses as needed. We would try to prevent the sessions from extending on into the night, as they have done in previous years. Our objective would be to complete each meeting within one and one-half hours.

h. The dollar amount in Council Resolution 74-54 was included with the understanding that supplemental funds would be voted, if requested. The Consultant-Negotiator suggested that he would make every effort to build a foundation so that bargaining could be continued without his participation and that he would try to do so within the $4,000 figure.

VI. COLLECTIVE BARGAINING

The following information was taken from summary reports prepared by the Consultant-Negotiator following each meeting. Photo copies were distributed to each member of the management team at the start of the following. They provided a brief review of the previous session and expedited planning for the upcoming one. They also assured some continuity.

A. With Fraternal Order of Police, Lodge 30, and International Association of Fire Fighters, Local 474:

1. Round One.

a. F.O.P. 7:30 p.m., Tuesday, May 7.

Review of the Record: In November, 1973, a list of proposals was presented to the Financial Committee of Council. Has that document been withdrawn? Yes. The FOP memo of January 14, 1974, contains the only proposals which the Police now have before us? Yes. You are aware of Counsel's letter of April 1 in which he asked for a reply to the proposals? Correct. You have seen the answer of May 1 in which he was advised: that our projected cost of those proposals was approximately $3,600/man/year; that you should reevaluate your requests and submit a more realistic package; and that our own position would be that you must support any request by direct comparisons with salaries, fringes, and other benefits in cities of comparable size in our labor market? Yes.

Questions: What do you consider Elyria's labor market in 1974? Do you expect it to be the same during the next two years? Can we agree that it is not the same as the Cleveland labor market? Yes. Is it in the same market as Oberlin, Avon Lake, Bay Village, Amherst, Olmsted Falls? What about Lorain County--with the recognition that labor markets do not stop at county boundaries--since Elyria workers must be residents of the county? If Elyria is a suburb of Cleveland, what other comparable population concentrations should be considered in our labor market? What has happened since 1972 with regard to job applicants? Same? Up? Down? Counsel suggested that Police wanted to be compared with police and not with manufacturing employees.

Observation: The FOP must bring in supportive data. City representatives will also do so. Management will bargain hard but fairly. Such is their responsibility and charge.

Next meeting, by Agreement: Wednesday, May 22, 7:30 p.m.

b. Fire Fighters, 7:30 p.m., May 14.

Review of Record: Your December 5, 1973 proposals are the only ones before us? Yes. The FOP had a set before us which, based upon rough calculations, could come to about $3,600/man/year. We described their proposals as "grossly impractical." Yours appear to be slightly lower. Is it your understanding--based on previous meetings which you had with Council's Finance Committee--that if any adjustments are agreed upon they will be effective as of January 1, 1974? Yes, definitely!

Questions: (The queries which were made of the FOP on May 7 were asked. They need not be repeated at this point.) Was a previous uniform allowance factored into your base salaries in 1972, at your request? Do you really want a reduction in your working hours? How about a five eight-hour day schedule? Why do you want more time off if it increases our costs? Could the money be better spent?

Data presented by F. F.: A list of twelve cities from all parts of Ohio, showing effective dates of starting and maximum salaries, progression schedule, and longevity payments.

Next meeting, by agreement: Thursday, May 23, 7:30 p.m.

2. Round Two

   a. F.O.P. 7:30 p.m., Wednesday, May 22.

Brief review of last meeting. Management's reports were used for this.

About Our Labor Market: There are population concentrations as follows--Elyria, 53,427; Lorain, 78,185; Lakewood, 70,173; Berea-Brookpark-Middleburgh Heights, 65,546. A spot check suggests that Elyria has been competitive with those cities and that Elyria has a better, more expensive fringe package. Two have already given salary increases in 1974. Adjustments have been made effective as of January 1 and March 3. Two are presently in negotiations.

Offer: On the basis of our projections about the ability of Berea to pay and upon knowledge about developments in nearby cities, the Committee is ready to offer you: 1. An overall adjustment (salary and benefits) in the amount of 7%; and 2. Any adjustments re allocation to salaries and fringe must be reached through successful negotiation.

About your January Proposals: Instead of giving you firm positions on each of your points, we will focus on selected ones: 1. Under no circumstances will the city consider an 18% adjustment in base pay during an 18-month agreement. 2. Having moved from a clothing allowance during the last negotiations, we find no reasons for reinstating one. 3. There is no support among police organizations--in Greater Cleveland, in Ohio, or in the U.S.A.--for a reduction in the work week from 40 to 36 hours. 4. Nor have we found any support for a cost-of-living escalator, based upon the BLS index, for policemen or for other municipal employees.

Areas Which Management Wants Reopened and Reconsidered. Eliminate any holiday which is not prescribed by Federal or State laws. Try to work out a better Hospital and Health Package. Discontinue compensating time off and move toward requirements of Amended Fair Labor Standards Act. Tighten provisions of College Incentive Program--particularly after lapses. Eliminate six-months-full-pay and six-months-half-pay provisions.

Next Meeting, by Agreement: Wednesday, June 5, 8:00 p.m.

b. Fire Fighters. 7:30 p.m., Thursday, May 23.

Reviewed Developments of Previous Meeting.

About Our Labor Market: (Same inputs as to FOP on May 22.) Offer: (Same)

Areas Which Management Wants Reopened and Reconsidered: (Same)

Next meeting, by agreement: Tuesday, June 4, 7:45 p.m.

Our findings: Salaries for Fire Fighters in Elyria are generally in line and competitive. Making allowances for longevity adjustments, Elyria pays almost the same for long-serviced employees. Even though the Elyria hiring rate is a little lower than those of other cities, Elyria has more than enough applicants awaiting openings. On fringe benefits, Elyria generally ranks first.

Management Salary Offer:

		Hiring	Class A
Present		$8,411	$ 9,750
Effective	1/1/74 - 6/30/74		10,150
	7/1/74 - 6/30/75	9,022	10,450
	7/1/75 - 6/30/76		10,750

Comments by F. F. Committee: We have not come into negotiations to give up anything. We could be receptive to alternative packages. If the city comes up with a 40-hour/week proposal, we might test the membership on its acceptance. Would consider a modified cost-of-living proposal--such as adjustments every five quarters. Other city employees have 13 holidays; we have 12. We want the insurance request. We do not believe that a person who has taken specialized training, but for some reason has not completed it, should lose his monthly supplement. Figures on compensatory time are negotiable. Must keep the six-month-full and six-month-half-pay protections.

Next meeting, by agreement: Wednesday, June 12, 7:30 p.m.

3. Round Three.

   a. Fire Fighters. 7:45 p.m., Tuesday, June 4, 7:45 p.m.

   Observations: Records show that among the 26 city employees who have 26 years of employment in Elyria, 11 are Fire Fighters and 4 are Policemen. Of 61 with 20 years or more, 19 are Fighters and 16 are Policemen. These data help to explain several important points about Elyria's salary practices. We now have comparable data for Lorain, Lakewood, and Berea-Brookpark-Middleburgh Heights.

   b. F.O.P. 8:00 p.m., Wednesday, June 5.

   Review Developments of previous meeting: Management covered the Observations and Salary Offer as presented to F. F. on June 4.

   Comments by Council: Data for men with five years' service show Elyria considerably lower. Agreed that salaries for 20-year persons are competitive. We need a clothing allowance. FOP is having a membership meeting on Friday, June 7. Can Management's package offer be sweetened before then? FOP proposed:

1/1/74 - 6/30/74	9% of base	$10,627
7/1/74 - 12/31/74	8% of base	11,477
1/1/75 - 6/30/75	8% of base	12,395

Management's response (after 20-minute caucus): The new FOP proposal is not a money saver. If anything, it asks for more than the original 18%. If the under-5-years-of-service employees are out of line, what can we do about giving them larger adjustments than the longer-serviced policemen? We will sweeten the package by making a cash payment for up to 100 hours of compensatory time for persons having such hours of credit.

Next meeting, by agreement: Thursday, June 13, 7:30 p.m.

4. Round Four.

   a. Fire Fighters. 7:30 p.m., Wednesday, June 12.

   Observations: Several points appear to be coming through--our mutual concern about the impact of inflation; our focusing on nearby cities for comparisons; our concern about persons with less than ten years' service; and interest in a long-term agreement. Last time, Management presented specific salary proposals $400; $300; $300. We have found that nearby departments are settling on about 8% for 1974. Based upon projected revenues Elyria would find it difficult to meet this figure. On "Fringes" Elyria is at the top. Therefore, the City will take a very hard look at any proposed adjustments in fringes.

   After some parrying, without getting a new proposal from the F. F., we explored other areas: Longevity and Clothing blend:

	1st Year	After 2nd Year	3rd Year	4	5	6	7	8	9	10
Now	0	0	1	2	3	4	5	6	7	8
		No Clothing Allowance								
Proposed	0	0	2	2	4	4	6	6	7	8
				1		1		1		
		Clothing Allowance								
				$150		$150		$150		

   Restated offer of cash payment for up to 100 hours for compensatory time.

   Reply to other proposals: No cost-of-living adjustment. (Have been exploring formula for longer agreement.) At work on a new health package. Cannot give an additional holiday. City needs a realistic offer from F. F.

Next meeting, by agreement: Wednesday, June 19, 7:30 p.m.

b. F.O.P. 7:30 p.m. Thursday, June 13.

Same Management inputs as to Fire Fighters on June 12.

New Proposal from F.O.P.

	7%	5%	5%
Present	1st 6 Mos.	2nd 6 Mos.	3rd 6 Mos.
Class A	1/1/74	7/1/74	1/1/75
$9,750	$10,432	$11, 018	$11,505

Such a package would be saleable to membership. Management asked about suggestions for distributing 18% over 30 months. For example:

Increase						
						Expire
Present	1/1/74	7/1/74	1/1/75	7/1/75	1/1/76	6/30/76
Class A	$400	$300	$300	$300	$400	
9750	10,150	10,450	10,750	11,050	11,450	

5. Round Five.

a. Fire Fighters, 7:30 pm., Wednesday, June 19.

Last time: City Committee waited for inputs from Fire Fighters. None came. You were standing on your originals. City presented a Longevity-Clothing Allowance Blend plus cash settlement of up to 100 hours for accumulated compensatory hours. Out feedback was that you might have limited interest in Longevity- Clothing Allowance, that you had no interest in the compensatory cash payment, and that you were holding for a cost-of-living section.

City is prepared to offer additional increases in base rates for 2½ year agreement. Will develop a better health package for the service costs. Will adjust overtime payments as will be necessary, in time, under Fair Labor Standards Act Amendments. Will modify the Educational Program.

A counter offer was presented by the Fire Fighters, as follows: First four Items: a. Base rate, Class A, 1/1/74 $10,350; b. Cost-of-Living plan, as modified; c. 1½ time after 40 hours with 56 hours per week; d. $200 per year clothing allowance. Second four Items: a. 7/1/74, $11,050; b. Dental care package; c. Life Insurance from $5,000 to $10,000; d. Vacations--3 after 5 years; 4 after 10; 5 after 15; 6 after 20. Third three Items: a. 7/1/75, $11,950; b. Reduce work week to 52 hours, 1½ after 40; c. Personal day, instead of employee's birthday.

After extended conferences and discussions, Management offered:

A	Effective	1/1/74	FF, Class A	$10,150
B	Effective	7/1/74		10,450
C	Effective	7/1/75		10,850
D	Effective	1/1/76		11,250

Adjourned 8:50 pm. without setting another meeting date.

b. F.O.P. 9:30 pm. June 19.

Received previous offer of Management.

FOP's New Proposal:

	1/1/74	7/1/74	1/1/75	1/1/76
Patrolman, Class A	$10,336	$10,811	$11,212	Plus a six-month cost-of-living, if positive

Membership adamant regarding clothing allowance. Will come down $50 from $300.

After an extended caucus, Management offered:

Over 30 months	1/1/74	7/1/74	7/1/75	1/1/76
Patrolman, Class A	$10,150	$10,450	$10,850	$11,250

Plus one $250 Clothing Allowance to be paid on 7/1/75 -

Next meeting, by agreement: Tuesday, June 25, 7:30 pm.

Management's representatives were on time for the June 25 meeting. FOP spokesmen were not there at 7:30 pm. There were informal discussions with some of the FOP team during the evening. In the meantime, the City bargainers made tentative plans for handling interruptions of services which might occur after the termination of the AFSCME agreement on June 30.

B. With Local 277 of the American Federation of State, County, and Municipal Employees, District Council 78:

1. Round One.

a. AFSCME, 7:30 30 pm., Thursday, May 16.

Review of Record and Documents: Final Approval by Council and the Mayor. The role of Management's Committee. Letter from Staff Representative to Mayor was dated April 9 and received April 10. Letter of April 19 from Consultant-Negotiator to Presidents and Staff Representative setting dates for first round of meetings. Paragraphs one and two of the April 9 reopening letter were read. Attention was directed to Paragraph 54 of the expiring agreement which provided that the 1972-74 document "shall be effective July 1, 1972 and remain in full force and affect until midnight, June 30, 1974, and thereafter from year to year unless at least ninety (90) days prior to said expiration date or any anniversary thereafter,

after party gives timely written notice to the other of an intent to negotiate any or all of its provisions." Ninety days prior to June 30, 1974 would have been April 1. The reopening letter was dated April 9.

Conclusion. The 1972-74 agreement was entered in good faith. The City of Elyria has carried it out with the same good faith. Consequently, the City and AFSCME (and Local 277) are now under contract until June 30, 1975. It should be made clear that there is no trickery involved. The Committee could not be more serious. Should you differ with our position, we are prepared to test its validity under Paragraph 18 (Grievance Procedure including Arbitration) of the current agreement. After very careful consideration and much discussion--and because of our concern about the economic problems facing Elyria employees--the Committee is prepared to bargain with you on salaries and wages only for the year July 1, 1974 to June 30, 1975.

Notation. After an extended period of silence, some comments were made by other persons on Management's team. The AFSCME Committee asked for a recess. Some twenty-five minuites later, the session reconvened.

Next Meeting, by agreement: Thursday, June 6, 7:30 pm.

b. Excerpts from May 23, 1974, letter from AFSCME's, Dist. 78, Staff Representative to the Consultant-Negotiator:

> The position of the City's Negotiation Committee regarding negotiation of only wages with Local 277 of the American Federation of State, County and Municipal employees AFL-CIO is an untenable one.

As you will note the language in Paragraph Fifty Four simply dictates that "...either party gives timely written notice to the other of an intent to negotiate..."

Paragraph Fifty Four does not dictate that a specific party or the City send notice of an intent to negotiate; nor does the paragraph dictate that a specific member of the Union send notice of intent to negotiate; nor does the paragraph dictate the individual of the City or Union who must receive said written notice of intent; nor does the paragraph dictate the manner in which the notice of intent to negotiate must be given; nor does the paragraph dictate that the notice of intent must even be signed.

Therefore, Paragraph Fifty Four would be satisfied if either the City or the Union gave written notice of intent to negotiate at least ninety days prior to the expiration of the present Agreement.

Neither the City nor the Union was silent in regard to the upcoming negotiations.

Attached are statements made by both the City and the Union which appeared in local newspapers evidencing an intent to negotiate...

It is, therefore, the Union's contention that the position taken by the City's Negotiation Committee, namely, that the letter, dated April 9, 1974, from me to the Mayor, was the only written notice of intent to negotiate given by either party, is completely without merit and contrary to the language found in Paragraph Fifty Four of the present Agreement. The letter of April 9, 1974, was written with the intent to set up specific dates of meetings regarding the negotiations in which both the City and Union had evidenced an intent to participate.

Furthermore, notwithstanding the above, it is the Union's contention that the acceptance by the City of the letter, dated April 9, 1974, which was followed by the Mayor's letter dated April 11, 1974 to our Union and the subsequent scheduling of negotiation meetings almost six weeks later by you, is tantamount to a waiver in regard to the timeliness of said letter.

Under the foregoing circumstances the Union strongly urges the City's Negotiation Committee to address itself to the Union's proposal which again will be presented at the next scheduled meeting on June 6, 1974.

2. Round Two.

   a. Meeting with members of Council. The Bargaining Committee invited members of Council to attend an informal briefing meeting at 6:30 pm., June 6. Seven of eleven members were present, including the person who had objected to the City's use of an outside negotiator. They were reminded that several of them had suggested, during our May 16 gathering, that we meet from time to time to update them on developments. They were advised that their members on the Bargaining Committee "have been actively and deeply involved." To date, there had been three meetings with the Fire Fighters, three with the FOP, and one with AFSCME. To date--as far as we can determine-- discussions have been kept within the bargaining room. We have been particularly careful to keep from bargaining via the media. Because developments of this week, however, could change that, we have asked for this meeting. On June 7, the FOP Counsel and Committee would report our offer to the membership. (Base adjustments of $400, effective 1/1/74; $300, effective 7/1/74-6/30/75; and $300, effective 7/1/75-6/30/76.) Even though the FOP representatives will ask the members to keep the offer within the family, someone may not do so. You should know about the offer ahead of time. More significantly, however, are developments with AFSCME which are upcoming within an hour.

The June 6 memo from the City's Bargaining Committee to that of AFSCME--which was to be handed to the Union after 7:30 pm--was read. The approach is to bargain hard--but fairly.

b. AFSCME. 7:30 pm., Thurdsay, June 6.

Recognized receipt of Staff Representatives letter of May 23. Copies had been prepared and sent to all members of the City's Committee. Each person was asked to consider the contents very carefully and to be prepared for several hours of deliberation.

Handed out copies of a June 6 memo from the City's Bargaining Committee--acting unanimously--to AFSCME, Local 277. After reviewing the developments of the May 16 meeting, the memorandum concluded:

> This is to advise you that nothing (in your May 23 letter or the enclosures) has caused us to change our basic position. We are now prepared to offer you a choice:
>
> A. You may test our position under the continuing labor-relations agreement--in full compliance with the provisions of Par. 18 (p. 3) and Par. 3 (p. 1).
>
> If you win, we will have to bargain with you on a new agreement to be effective July 1, 1974.

> If you lose, that is it. There will be no reopening on any provision until the 1975 negotiating period.
>
> B. On the other hand, if you will give us a written statement that you are waiving your rights to grieve under our continuing agreement and that you are ready to bargain only on wages and salaries, we are prepared to bargain in good faith.
>
> If we can agree on wages and salaries between now and June 30, we are prepared to recommend that any adjustments be effective on July 1, 1974.
>
> If, however, we cannot agree before that date, any new rates will become effective only on the date approved by City Council and the Mayor. We would recommend no retroactive payments of wages.
>
> Thank you very much for your prompt reply and, particularly, for advising us whether you wish to pursue routes A or B, above.

Management called AFSCME's attention to Paragraph 3 of the 1972-74 Agreement:

> The Union shall not, directly or indirectly, call, sanction, encourage, finance, and/or assist in anyway, nor shall any employee instigate or participate, directly or indirectly, in any strike, slow down, walkout, work stoppage, or interference of any kind at any operation or operations of the City for the duration of this Agreement.
>
> Violations of Paragraph 3 shall be proper cause for discharge or other disciplinary action.

Next Meeting: The first date open for the City's Committee was Tuesday, June 18. AFSCME's Staff Representative suggested that the meeting be adjourned and added: "I will be in touch with you."

c. Letter dated June 12, 1974, from Staff Representative, AFSCME, Detroit 78, to the Consultant-Negotiator:

> Nothing in your letter of June 6, 1974 has caused the Union to change its position.
>
> The members of this Union will not creep, crawl, beg or prostrate themselves when it comes to negotiating what they are justifiably due.
>
> The Union intended no confrontation with the City and still stands ready to negotiate in good faith. If the City, however, continues to blatantly disregard the Union's proposal, then it is the position of this Union that the present Agreement terminates midnight June 30, 1974 per paragraph fifty four of said Agreement.
>
> Please advise me of your decision.

3. Round Three.

a. AFSCME, 9:30 pm., Monday, June 24.

Observations: Re the charge that a "Carpetbagger" had been brought in by the City. In 1970 and 1972 both the FOP, Lodge 30 and AFSCME, Local 277, brought outsiders (Clevelanders, one an Attorney, the other a Staff Representative) to represent their members in collective bargaining. In 1974, the City Administration and Council decided that the full responsibility could no longer be handled by part-time council members. They, too, turned to a Clevelander, whose specialization was in labor relations. So is it not time that we dropped the "who did what to whom first" with a carpetbagger? Secondly--without wishing to be argumentative--the City's Committee has never been blatant with the Union. We have not been noisy or vulgar. If you have considered our actions offensive, we are sorry. They were not intended to be that way. At no time have we asked or suggested that union "to creep, crawl, beg, or prostrate" yourselves by suggesting that we hold this meeting, we have shown our desire to get off dead center.

AFSCME Staff Representative said that he had no response. Instead, he distributed AFSCME's proposals to amend and modify the 1972-74 Agreements. The ten modifications for existing paragraphs and sixteen "new" provisions were read and discussed. Therewith, Management's Representatives asked for a 30-minute recess.

Having discussed the document, the City's bargainers returned and stated:

A. We are unanimously agreed and convinced that we now have a continuing agreement through June 30, 1975.

B. We will, nonetheless, agree to negotiate with you on all of your proposals--and on ours--if you will commit yourselves to an agreement running from July 1, 1974 through June 30, 1976. Otherwise we are prepared to stand on Point A, above.

C. We will agree that negotiated wage and salary adjustments will be made effective on, or retroactive to, July 1, 1974.

AFSCME's Representative asked for a recess.

When the meeting reconvened, the Union spokesman announced that they: would change their proposal in re Paragraph 54 from one year to: "The Union proposes two-year agreement."; would accept the effective, and retroactive, date of July 1, 1974; and would request a specific counter offer at the next session.

Next Meeting, by agreement: Tuesday, June 25, 9:00 pm.

b. AFSCME, 9:00 pm., Tuesday, June 25.

Observations: Our findings with re the Elyria Labor Market (same as with Fire Fighters and FOP, in earlier meetings). Labor supply is up. People are waiting for jobs. That Elyria is at or near the top on fringe benefits, and it's longevity program is the best. Long-serviced employees have salaries which are competitive. Hiring may be low--particularly for employees with less than eight years of service. Thus, any monies available would correct salaries.

City's Proposals: Eliminate holidays not prescribed by federal or state laws. Reexamine Health Package to try to get more union for our money: change probation period from sixty days to six months. Eliminate six-months-full and six-months-half pay provisions.

Reactions to your proposals: In general they--like those of the Fire Fighters and FOP--were "grossly impractical."

Then began the slow, point-to-point evaluations, the quick rejections of certain items, the modification of others, and the acceptance of a few new ones, negotiations and threats of walkouts developed during the months immediately ahead.

c. After June 30. The Consultant-Negotiator had kept the City's Bargaining Committee informed about the amount of the $4000 remaining. With the June 25 meetings, professional changes and expenses under Council Resolution 74-24 had reached $3,681.20. The entire committee agreed that data were in hand, that the objectives and plans had been set, and that bargaining sessions, as needed, could be held under the leadership of the Chairman. The Consultant-Negotiator's remaining day of service should be held in reserve. Only if the process really broke down would the Administration and Council be asked for additional funds.

Whatever the preceding factual information, there was a subsequent newspaper report about the city employees' dislike of the negotiator. According to the reporter's story of August 19, the Safety-Service Director said:

> The employees weren't happy about it from the start. One of the main reasons for reaching the impasse (in mid-July) was that the employees didn't like the idea of a carpetbagger or an outsider.
>
> But he set the groundwork. The employees didn't like this and it got rather difficult to deal, after a certain point. He did as much as he could under the circumstances.
>
> We took a harder line this time, because we feel the current contract (1972-74) is excellent. Our fringes are as good or better than those of the 15 to 17 surrounding communities we studied. We knew how far we could go when we sat down at the table, and we told them so.

The Chairman of Council's Finance Committee and Chairman of the City's Bargaining Committee commented on the work of the Consultant-Negotiator:

"We're very pleased. His work was for a definite purpose--to develop the city's position." On August 21, the Chairman sent a photocopy of the newspaper story, on which he noted: "I should add to this. The real importance of your work here, as I see it--in addition to fact gathering--was to put us in a frame of mind to approach the problem with a well-thought-out plan and a business-like attitude. You also gave us the ability to meet their professionals on the same level..."

VII. ORDINANCES AND RESOLUTIONS

A. Division of Police and Fire.

1. Ordinance No. 74-265, November 4, 1974.- Basic Salaries and Clothing Allowance:

	Previous Rate	Effective Jan. 6, 1974	Effective Jan. 5, 1975	Effective Jan. 4, 1976
Patrolman/ Woman and Fireman/ Woman, Class A	$9,750	$10,550	$11,350	$11,550
Patrolman/ Woman and Fireman/ Woman, Class B (Probationary Period of One Year)	8,411	9,211	10,011	10,211
Police Cadet Trainee (Part-Time)	5,200 (Equals $400 Per Month)	5,200	5,200	5,200

Commencing January, 1974 and every other year thereafter, there will be a $200 payment as clothing allowance, with the exception of Patrol Persons Class B who receive an initial allowance of $400.

2. Resolution No. R74-79, November 18, 1974: "Section 1: That commencing with July 1,

1976, the City will offer to the members of the Divisions of Police and Fire a major medical and dental program. Section 2: That the cost of said program will be paid by the City in an amount of $125 per man. Section 3: If the cost of the program exceeds $125 per man, the additional cost over $125 will be the subject matter of negotiation and agreement between the city and members of the Divisions of Police and Fire."

3. A small number of improvements--which were covered by separate resolutions--reflected the changes which were made parts of the new AFSCME agreement. They will be mentioned in IV, B.

4. Resolution No. R74-80, November 18, 1974: "Section 1: That the Council of the City of Elyria expresses its intent to commence negotiations with the members of the Divisions of Police and Fire."

5. Some Observations.

    a. The Ordinances and resolutions set the conditions for a period of 2½ years. This meant that agreements involving the uniformed and nonuniformed employees would expire in mid-1976--an off year for city elections.

    b. The increases of $800, $800, and $200--which were to be effectuated in the first week of January in 1974, 1975, and 1976--totalled $1800. They came to 17.63% to be given over 2½ years instead of the 18% over 1½ years asked by the FOP. The total, however, was $300 more than the amount requested by the Fire Fighters, but it was for a period of 2½ instead of 2 years.

    c. The compromise reached on clothing allowance appeared to be that. Instead of granting $300 or $200 per year--as proposed by the FOP and Fire Fighters, respectively--City negotiators agreed on a $200 allowance in January, 1974, and every other year thereafter.

d. The requested cost-of-living (escalator) provision was not approved.

e. Whatever the concern which had been professed (early in the negotiation sessions) about the uniformed employees who had less than eight years of service, none of the allocated money was used for making additional corrections for those persons. The same $800, $800 and $200 increases were given for Class B employees--the hiring-probationary classification. Notably, the part-time salary of $5200 for trainees remained unchanged--in January, 1974, 1975, and 1976. A more than adequate supply of part-timers made an increase of the $5200 salary unnecessary.

f. Some relief for short-service employees came through a change in the longevity pay. The first 1% was to be paid, henceforth, after the second, instead of after the third, year of employment. The maximum of 20% remained unchanged, but it was reached after twenty-two years' service.

B. AFSCME, 277.

1. Resolution No. R74-81, November 18, 1974., "Section 1: That the Mayor be and he hereby is authorized to enter into an Agreement with Local 277 of the American Federation of State, County, and Municipal Employees, AFL-CIO, and District Council 78. A copy of said agreement is attached hereto and made a part hereof as though fully rewritten herein. Section 2: That said Agreement is to be effective midnight, July 1, 1974, and remain in full force and effect until midnight, June 30, 1976..."

   a. Wages were increased 39¢ per hour effective June 30, 1974 and 37¢ on June 29, 1975. The Union had requested a 75¢ in a one-year contract.

b. Instead of modifying the Longevity Pay Formula to 1% after 1 year of service and an additional 1% for each year to a maximum of 20%, as requested, the new agreement provided that employees would start at Step C, move to Step B on the first anniversary date of employment, reach Step A on the second anniversary, and fit into the 1% plan after the third year.

c. The Major Medical and Dental Program approved for the Divisions of Police and Fire, effective July 1, 1976, (Resolution No. R-74-79) and providing for an outlay of $125 per person was given to AFSCME.

d. Some give and take.

   1. There would be no pyramiding of overtime.

   2. Employee had the right to refuse to work overtime, except in emergency situations.

   3. Call-in pay, which had been a minimum of four hours, was reduced to two, if the person worked less than 2 hours. If, however, the work was for more than two, the minimum would be for four hours.

   4. The probationary period was increased from 60 to 120 days.

   5. The request for three personal days off with pay was not granted, but one of the Bereavement Days would be paid for and not changed to Sick Leave.

   6. Differentials for second and third shifts were increased by 3¢ to 15¢ and 25¢, respectively.

e. Miscellaneous.

   1. The number of stewards was increased from 6 to 9.

2. New job classifications and the rates of pay were to be discussed by Union and City Representatives. Management could set a temporary rate and classification. However, differences would be subject to arbitration. The arbitrator was given authority to set classifications and rates.

3. A new paragraph contained Progressive Disciplinary Standards. Oral reprimands should be given in the presence of a Department Steward. A written reprimand could be given after a conference involved the employee, the Steward, and the Safety-Service Director. A similar requirement governed three-day and one-week disciplinary layoffs.

f. Paragraph 54--which provided that if a ninety-day prior-to-expiration notice was not given, the existing contract would be extended from year to year--had caused both heat and light during the negotiations. The one-sentence paragraph continued unchanged except for an additional sentence which provided: "If this paragraph is not complied with by the Union, the City shall have the right to file a grievance from this paragraph."

C. Elective Officials and Others. Even though elective officials and certain classified and unclassified employees of Elyria were not covered by the collective-bargaining processes involving Fire Fighters, Fraternal Order of Police, and persons represented by AFSCME, they, nonetheless, were affected by the negotiations. It is quite probable that the ordinance which provided for higher salaries for them led to additional increases for Police and Fire officers.

1. Ordinance No. 74-224.

Elyria's City elections had been held in 1973. Elective officials, therefore, would hold their positions and salaries until the November election of 1975. The impact of the 1974 collective bargaining was not felt until 1976. Salaries were as follows:

	In 1974	Effective Jan. 1, 1976
Mayor	$16,000	$22,000
Auditor	11,600	16,000
Solicitor (PT)	7,000	12,000
Council President (PT)	2,970	4,000
Council Member (PT)	2,770	3,800

2. Ordinance No. 75-24, February 3, 1975.

On November 4, 1974, City Council had approved $800, $800, and $200 increases for Patrol/Firemen/Women, Class A (Ordinance No. 74-265) effective January 6, 1974; January 5, 1975; and January 4, 1976. Identical increases had been approved for Officers in the Police and Fire Departments.

On February 3, 1975, Council approved additional salary increases for the Police and Fire officers, as follows:

	Effective June 30, 1974	Effective Jan. 5, 1975	Effective June 25, 1975
Chief	$370	$1,170	$1,196
Captain	6	832	806
Lieutenant	0	800	584
Sergeant	0	800	402

Thus, the salaries which had been paid at the end of the 1972-74 agreement by 1976 had increased, as follows:

	December, 1973	June, 1976
Chief	13,676	17,212
Captain	12,012	14,456
Lieutenant	11,102	13,286
Sergeant	10,348	12,350
Patrolman/Woman Fireman/Woman	9,750	11,550

There was every reason to believe that the City's Bargaining Committee--without the involvement of the Consultant-Negotiator--played the key role in effectuating such changes.

VIII. WHERE DO WE GO FROM HERE?

A. Monday-Morning Quarterbacking?

Expert and novice Monday-morning quarterbacks among municipal managers might have a field day with their criticisms of and questions about Elyria's labor-relations in 1974. The questions which follow are illustrative. They are intended to whet the mind's appetite:

1. In view of the previous advocacy relationships with representatives of their employees, should Council and/or the Administration have anticipated a charge of carpetbagger against any professional negotiator? What, if anything, could have been done? Would the results have been worth the effort?

2. Should Council and/or the Administration have planned and effectuated a public relations program? Who should have done it? At what costs?

3. Was the decision by the City's Bargaining Committee to avoid making public statements--or, at most, to speak only when spoken to--a wise one? Does the fact that public-sector bargaining, rather than private, was involved make a significant difference? Are you sure?

4. Was the City's Bargaining Committee too large, too small, or just right? Did it take an abnormal amount of time from the persons who were involved? Since they received no extra pay for their inputs of energy and wisdom, did that make a difference?

5. After Management had taken the position--in the first round of bargaining with the FOP and the Fire Fighters--about the burden of supporting improvements in salaries/wages and benefits, did they make a mistake in taking the initiative in round two? Was the meeting with AFSCME sufficiently important to warrant such a change in strategy?

6. Should Management have held out for a Lorain County Labor Market? Did the inclusion of Lakewood and Berea-Brookpark-Middleburgh Heights, along with Elyria and Lorain, give the Unions and employees a break? Was it suggested by Management in order to keep attention from focusing on developments in Cleveland? Did the Union underutilize the Cleveland Formula--an Ordinance which kept that City's Police and Firemen 3% above rates paid by Ohio cities of 50,000 or larger population?

7. What would be the impact of the provision to set up a major medical and dental program to be effective the day after the expiration of the agreement? Would payment of a flat amount, $125, have been sufficient? Did the Bargaining Committee and Council go too far in agreeing that "the additional cost over $125 will be the subject of negotiation and agreement" between the parties?

B. Epilogue. The 1976 labor-relations developments in Elyria followed a very different model. It is not necessary for us to determine whether it was a single causal factor, or a combination of them, which brought the change. A tragic automobile accident in 1975 had taken the life of the extremely able, poised and relatively young Chairman of Council's Finance Committee and of the Collective Bargaining Committee. His professional training and practice in accounting had been supplemented by in-depth experiences in municipal labor relations. His loss, alone, may have been enough to cause Council to reexamine the City's bargaining practices. The record showed ever-increasing involvement in 1970, '72, and 1974. They may have concluded that Council had become overinvolved. Their decision may have been enhanced by the election of a new Mayor--a person who had been a Councilwoman-at-large. In any case, Council took the position that the 1976 collective-bargaining process was the responsibility of the Administration. And the new Director of Safety and Service--who was given the leadership responsibility--

was the newly retired Chief of the Fire Department.

Where did they go from there? The sequel Elyria study has been prepared by the perspective of the Assistant Safety Director.

IX. APPENDIX--THE DATA

I Salaries -- including longevity pay, after prescribed periods:

	1973					1974				
	Hiring and First year	2nd Year	3rd Year	4th Year	After 23 Years	Hiring and First Year	2nd Year	3rd Year	4th Year	After
A. Elyria	$8,411	$9,750	$9,750	$9,847.50	$11,700					
	Hiring	½-1½ Years	1½-2½ Years	After 21 Years		Hiring	½-1½ Years	1½-2½ Years	After 25 Years	
B. Berea	$8,764	$9,232	$10,012	$11,688		$9,535	$10,044	$10,893	$12,646	
	Hiring	6 Mos.	12 Mos.	After 25 Years		Hiring	6 Mos.	12 Mos.	After 25 Years	
Brookpark	$9,400	$9,950	$10,500	$12,600		$9,400	$10,200	$11,000	$13,500	
	Hiring	1-2 Years	2 Years	After 20 Years		Hiring	1-2 Years	2 Years	After 20 Years	
C. Lakewood	$9,000	10,710	$11,575	$11,875		$9,000	$11,567	$12,501	$12,851	
	Hiring	2-3 Years	3-4 Years	After 25 Years						
D. Lorain	$9,015	$9,517	$10,057	$11,907						

II Vacations

	1973		1974
A. Elyria	1-2 Years 2-10 10-16 16 and over	1 week 2 weeks 3 weeks 4 weeks	
B. Berea	1-10 10-15 After 15	2 3 4	Unchanged
Brookpark	1 5 10	2 3 4	Unchanged
C. Lakewood	1-10 10-14 15 and over	2 weeks 3 4	Unchanged

Special Cases

D. Lorain	1-10	2 weeks	Special Cases
	11-15	3	
	16 and over	4	

III Paid Holidays

	1973		1974
	Police and Fire	Other Employees	
A. Elyria	12	13	
B. Berea	8 plus half days on Good Friday and Christmas Eve -- at Mayor's discretion.		Unchanged
Brookpark	9		Unchanged
C. Lakewood	8		Unchanged
D. Lorain	9		

IV Clothing Allowance

	1973	1974
A. Elyria	None -- previously factored into base salary.	
B. Berea		
Fire	$150	Unchanged
Police	$250	
Brookpark	$250	Unchanged
C. Lakewood		
Fire	$200	Unchanged
Police	$275	
D. Lorain		
Fire	$125	
Police	$150	

V Cost-of-Living (Escalator) Adjustments

	1973	1974
A. Elyria	None	
B. Berea	None	Unchanged
Brookpark	$10/Month	Unchanged
C. Lakewood	None	None
D. Lorain	None	

VI Dental Program

	1973	1974
A. Elyria	None	
B. Berea	None	None
Brookpark	None	None
C. Lakewood	None	None
D. Lorain	None	

VII Length of Agreement

	1973	1974
A. Elyria	2 Years	
B. Berea	1 Year	1 Year
Brookpark	(Information not available)	
C. Lakewood	1	1
D. Lorain	19 Months	

MODULE VII. CLASS 2

A Sequel: Negotiations in Elyria in 1976

I. Objectives

- to reexamine the roles of the participants when responsibility for bargaining was placed upon the Mayor and her Administration.

II. Instructor's Note

During the three-hour session which is given to the Sequel Elyria Study, there should be many opportunities to discuss the advantages and disadvantages of the systems used in 1974 and 1976. Some of the questions and the Monday-Morning Quarterbacking may be used again.

The students should be urged to update themselves on developments in their own municipalities. Should time permit, some of the best persons may be asked to present twenty-minute reports. These, of course, can present additional and contrasting insights into labor relations in the area.

III. Lecture and/or Discussion Topics

Management

Preparations for Bargaining

Local 277, AFSCME

Local 474, Fire Fighters

Lodge 30, FOP

Closing Observations

IV. Management

By contrast with the deep involvement of Council (particularly the Finance Committee) in the 1974 negotiations, the bargaining responsibilities in 1976 were given to the Mayor and her Administration. The fact that a Republican had defeated a Democrat in the 1975 mayorality election may or may not have influenced the decision of a Democrat-controlled Council to relinquish the day-by-day bargaining responsibility. Ratification of agreements, of course, remained with Council.

The City's negotiation team consisted of the Director of Safety-Service (who had recently retired as Fire Chief); the Assistant Director (who had been an experienced negotiator and labor-relations practitioner in the private sector); the Director of Finance (a former City Auditor, Safety-Service Director, and private-sector union officer); and the Director of Law (who had recently been a State Senator).

V. Preparations for Bargaining

The City's negotiating team used the newly compiled Wage, Salary, and Fringe Benefits Surveys which had been released by the Ohio State Department of Personnel under the Intergovernmental Personnel Act. Data were available for Lorain County, the Region, and the State.

VI. Local 277 of the American Federation of State, County & Municipal Employees, AFL-CIO, District 277

The AFSCME Staff Representative who had headed the 1974 negotiations initiated the meetings of 1976. Because of a number of complications and problems, he was subsequently replaced by another Staff Representative. Even though sixty-six proposals were submitted by AFSCME in May, attention focused on the following:

Proposal	Actions (with some comments)
1. "Reasonable time to investigate, process, or file grievances during working hours without loss of pay."	1. Accepted, with agreement that steward must get written authorization from his supervisor before taking City time to handle grievances.

2. Under the severe weather clause, add a "wind chill factor".	2. Denied "wind chill factor". Not working in temperatures below 5 degrees or 6" snow was extended to all employees (not only sanitation), except in emergencies.
3. Any disciplinary action which was one year old would be destroyed.	3. Agreed to destroy one-year old written disciplinary actions. However, City got an enlarged section on Disciplinary Action--including a formal five-step procedure from verbal warnings to discharge. This action was spelled out. Department Heads can now give up to three days off without pay. Prior to this, all disciplinary action had been handled by the Safety-Service Director. This change allowed supervisors to take immediate action in disciplinary cases and encouraged them to assume the responsibilities of leadership.
4. Under Grievance Procedure, add in Step #4 that "notices be mailed to above mentioned parties."	4. Agreed. Also provided that the Department Superintendent would attend the meetings with the Mayor. Meetings between the Steward and the Superintendent plus written answers were changed from three days to five days in Step #2.
5. A reduction in Probationary Period from 120 days to 60 days.	5. Probationary Period was extended from 120 days to 6 months or 180 calendar days. However, after 60 days, the employee was entitled to all benefits including the Grievance Procedure.
6. Weekly pay periods	6. Denied.

7. Eighty-five cents per hour salary increase plus additions to any other wage inequities. Wanted Cost of Living of one cent for every three tenths of a percent increase in the index.	7. Wage increases granted: 25¢ effective 7-4-76 and 20¢ effective 7-6-77.
8. Longevity pay - to start after 2 years instead of 3 years.	8. Accepted.
9. Time and one-half for Saturday work and double time on Sunday.	9. Agreed providing the days were not a regular work day for the employee.
10. Twenty-five cents per hour on Second Shift and thirty-five on Third.	10. Denied.
11. To expand and strengthen Job Bidding Provision.	11. Expanded Job Bidding Procedure subject to Civil Service Procedures. (This produced the most heated argument during the negotiations and City team walked out of meeting.
12. Vacations: two weeks after one year; three weeks after two years; four weeks after eight years; and five weeks after sixteen years.	12. Approved as follows: one year, two weeks; after seven years, three weeks; after fourteen years, four weeks.
13. Holidays: Full days on Good Friday and Christmas Eve (now ½ days); Add day after Thanksgiving; and Martin Luther King Day (employees had been given the day off with pay by a previous administration--even though it was not covered by the agreement).	13. Holidays: All Union demands denied except Martin Luther King Day which was added. City offered to trade President's Day for day after Thanksgiving, but the Union refused.
14. Hospitalization: Emergency Room coverage; paid dental and all benefits previously given to Safety Forces.	14. Agreed to Blue Cross, Blue Shield high level Plan ($118.50 per month) which includes Dental & Prescription Plan. City also agreed to pay $5.50 per month to AFSCME for cost of Life Insurance and Eye Care.

15. Foremen were never to perform bargaining-unit work. They were to instruct.	15. Denied.
16. Drop Foremen, Engineers, Solicitor's Office, Auditor's Office, Court and Health Department employees from "excluded list."	16. City combined individual jobs into general departments on Exclusion List. This shortened the list. Added Lift-Station Foreman (Union President) and Head Custodian to excluded list. (The Union President, thereby, left active Union participation.)

The agreements had been reached after nine very-lengthy meetings.

VII. Local 474, International Association of Fire Fighters

The Ordinances and Resolutions governing salaries, hours, and working conditions of the Fire Fighters were to expire on July 4, 1976. Negotiations commenced on May 26 and continued through nine meetings. The Parties agreed to discontinue the use of their series of ordinances and resolutions. Instead, they would enter a full, written agreement. The Fire Fighters brought to the first meeting a new contract, which included twenty-five sections. (The document had been drafted by a former City Solicitor.) The major proposals and the actions thereon were:

Proposed	Actions (with some comments)
1. Payroll deductions for dues.	1. Agreed to deduct Union dues. Will deduct "service charge" only if authorized by non-union employee.
2. Life Insurance to be increased to $10,000 (from $5,000). City to pay premiums and give employee a paid-up $5,000 Policy upon retirement.	2. Life Insurance stayed at $5,000. City will pay $5.50 per month to any carrier chosen by F.F.A.
3. Reduce weekly hours from fifty-six to fifty-two.	3. Working hours to stay at 56 hours per week.

4. Minimum man power to be twenty-two men on duty. If twenty-two were not there, management would call off-duty men and pay time-and-a-half.	4. Agreed to 21 men on duty at all times.
5. Pay increase of $2,500 per year plus Cost of Living. Overtime to be paid if called in during off-duty time or if held over--figured on 2,080 hours (based on a 40-hour week and they work a 56-hour week).	5. Wage increase: $618.00 to be effective in 1976 and $520.00 in 1977. Overtime not retroactive to July but effective 11-1-76.
6. Vacations:	6. Vacations:
For Firemen 3 tours of duty after 1 yr. 6 tours of duty after 2 yrs. 9 tours of duty after 10 years 12 tours of duty after 16 years	For Firemen 6 tours of duty after 1 year 9 tours of duty after 7 years 12 tours of duty after 14 years
For Fire Prevention Bureau & Chief 1 week after 1 year 2 weeks after 2 years 3 weeks after 10 years 4 weeks after 16 years	For Fire Prevention Bureau & Chief 2 weeks after 1 year 3 weeks after 7 years 4 weeks after 14 years
7. Twelve paid Holidays including Personal Day and Birthday.	7. Holidays: Six tours of duty off in lieu of ten holidays plus 1 tour for Personal Day; 1 tour for Birthday; and 1 tour for Martin Luther King Day.
8. Clothing allowance of $300.00 per year.	8. Clothing allowance of $325.00 per year. This was agreed upon during executive session of City Council. Higher allowance ($25.00) was a compromise reached because of the salary limits.
9. Paid dental plan plus high-level Blue Cross & Blue Shield.	9. Paid dental plan plus high-level Blue Cross & Blue Shield.

10. Bereavement Pay: 3 tours of duty--3 to 5 days for 40 hour-employees.	10. Received 3 tours of duty for Bereavement pay or 3 to 5 days for 40-hour employees.
11. Schooling, as required by Department, to be paid at overtime rate. City shall reimburse employee for books and tuition.	11. Schooling to be paid at overtime rate. Books and tuition to be reimbursed 100% in 1976-77 year and at 50% in 1977-78.
12. A Grievance Procedure.	12. Agreed to a Grievance Procedure.
13. A "Me-too" Clause. (Same as Article XXV, FOP Contract.)	13. Provided a "Me-too" Clause.

VIII. Lodge 30, Fraternal Order of Police

It was agreed that the Police--as well as the Fire Fighters--would enter a labor-relations contract with the City. This document would replace the past practice of using a series of ordinances and resolutions which had set the salaries, hours, and working conditions. During the eight meetings between the Parties--June 15 to Sept. 17--the following proposals were resolved:

Proposed	Actions (with some comments)
1. Base pay increase of $1250.00 in 1976. (After several meetings the FOP lowered their demands to $800.00 in 1976 and $700.00 in 1977.)	1. Wage increases: $618.00 in 1976 and $520.00 in 1977.
2. Vacations: two weeks after one year; three weeks after eight years; four weeks after twelve years.	2. Vacations to be same as Service employees: After one year, two weeks; after seven years, three weeks; after fourteen years, four weeks.
3. Thirteen days of paid vacation in lieu of thirteen paid holidays.	3. Instead of thirteen days of paid vacation in lieu of thirteen paid holidays, the City agreed to ten additional vacation days.
4. Quarterly Cost-of-Living Adjustments.	4. Denied Cost-of-Living Adjustments.

5. Differentials of twenty-five cents for night shift and fifteen cents for afternoon shift.	5. Denied shift differentials.
6. A $300.00 clothing allowance payable yearly.	6. Agreed to a $325.00 clothing allowance. City negotiating team went to $275.00 and would go higher suggesting that the problem be taken to a specially called executive session of the City Council (along with the Fire Fighters). This was held, and the $325.00 allowance was agreed upon plus $400.00 initial amount for new employees already in previous agreement.
7. Officers not using accumulated sick time during year should get an extra week of paid vacation.	7. Denied extra week of paid vacation in lieu of unused accumulated sick time.
8. Compensation for Court time.	8. To be paid for eighty hours of possible overtime (Court time) at officers' present rate of pay. To be paid quarterly in no less than twenty-hour increments. Officer had option of reducing by twenty hours his accumulated compensatory time in first month of each calendar quarter. This offer was made to FOP in order to clean up the existing 20,000 hours of accumulated court time.

IX. Closing Observations

Prior to the initial bargaining sessions with the Unions, the City's negotiating team agreed to hold to a 5% increase in costs--to cover both wages (salaries) and fringe benefits. There was unsubstantiated alarm from the Auditor's Office that Elyria was in serious financial trouble. The final package came to 5.3% increase.

Even before the contracts were submitted to Council for approval, the financial "storm" broke. Council weighed the possibility of rejecting the agreements. Nonetheless, the AFSCME contract was ratified and some time later were so the documents for the Safety Forces. The Fire Fighters offered to defer receiving their overtime payments until 1977 because of the financial crisis. The offer was accepted by the City.

Municipal elections will be held in Elyria, Ohio, in 1977. What happens then will certainly influence the bargaining pattern and developments when the two-year contracts expire in 1978. Whether Council delegates the collective-bargaining responsibilities to the Mayor and the Administration or returns to the pre-1976 pattern of continuing and deep involvement by the Finance Committee remains to be seen.

MODULE VII. CLASS 3

Cleveland Heights, Ohio: Without an Increased Income Tax?

I. Objectives

- to review the labor-relations problems which faced an "All-American City" in 1975.
- to share the budgeting challenges of 1976.
- to study specific actions which were taken after a proposed increase in the income tax was voted down in June.
- to examine the educational program which was planned and effectuated.
- to understand the impact of an income-tax increase which was voted in November.

II. Instructor's Note

One-half of the three-hour period should be given to considerations of the report about Cleveland Heights. This should allow some additional time for student reports on developments in other municipalities.

III. Lecture and/or Discussion Topics

Background

A Financial Quandry

The June 1976 Election

Citizen Response

The November Election

Appendixes

IV. Background

When a new man became City Manager in July, 1975, the prospects appeared secure for a smooth city administration in the bicentennial year. Cleveland Heights, Ohio, had recently been honored with an "All-America City Award" by the National Municipal League.

New techniques used by the Division of Police--implementation of a new Tactical Unit for violent crimes, reintroduction of visible patrolmen walking beats, a new Youth Services Bureau offering counseling to first offenders--had been accompanied by marked decreases in crime. While the major crime rate in surrounding Cuyahoga County had increased nearly 14% in 1975, Cleveland Heights had had an 11.4% decrease, according to the F.B.I. Robbery had decreased 37.9% in 1975. Similar improvements had been made by the Division of Fire, Health Department, and Division of Parks and Recreation.

On the other hand, there were some data which suggested future difficulties, especially with the tax base. Cleveland Heights offered an income tax-credit of [illegible]0% to residents who paid city taxes elsewhere--because 80% of the employed residents worked outside the city. More than 20% of the city's residents were at least sixty years of age or older. Furthermore, the total population had decreased from 60,767 in 1970 to 58,835 in 1974. School population had fallen 3% per year during the last decade. Rapidly, Cleveland Heights was becoming a mature community with an increasing average age of the residents. Ten deaths per thousand population occurred the previous year. This was more than double the ratio of newer, growing communities.

V. A Financial Quandry

One of the first problems the new City Manager found was an anticipated financial shortage for the forthcoming year. A projected 1976 budget indicated expenditures would exceed revenues by $950,000. Even if all of the reserves were used, Cleveland Heights would still run a deficit approaching $350,000.

As a result, in December, 1975 the City Manager recommended that the city temporarily freeze all hiring and closely restrain overtime and purchasing expenditures. Following Council approval, an Administrative Review Committee (ARC) was established to study monthly budgetary expenditures. The city manager also asked for, and received, action recommendations from the various departments. Among other suggestions were: (a) a 5-10% salary cut for all employees, (b) a $5 monthly charge for rubbish collection (estimated revenue $1,000.00), (c) doing away with the 50% city income-tax credit (estimated income $800,000), (d) layoff of personnel, (e) have employees pay for their own hospital, dental, and prescription insurance, (f) a 3% income tax, 100% tax credit, coupled with reduced property taxes, (g) a 1-mill property-tax hike (estimated revenue, with the tax credit, $1,060,000).

Everything considered, the City Manager felt the best strategy was to seek an increase in the city income tax during the June, 1976, primary elections. With a hiring freeze and a strict monitoring of expenditures, any overt action such as service and personnel cuts could be avoided, at least until the election. Accordingly, a revised city budget was adopted and preparations made for the June tax-increase request. (See Appendixes A and B.)

VI. The June 1976 Election

The primary election was held on June 8, 1976. In spite of the attempts to enlighten the voters, the tax increase was defeated by 1329 votes (of 13,831). One explanation for the defeat was that an increase in the school levy was on the ballot. That issue had been rejected in November, 1975. It was approved in June, 1976.

On June 15, the City Manager made several recommendations to the Mayor and City Council. Excerpts from his memo of June 15 included:

> There are several obvious directions which could be taken at this time but after careful thought on the part of the staff and I might add considerable time and computations, the suggested reductions are recommended. Alternatives naturally could include wholesale elimination of such programs as the Planning Department, the Office on Aging, the Comprehensive Real Estate Program, etc., but in my opinion now is exactly the time we need these programs the most....
>
> For years the Public Works Department has been ignored and forced to use outdated, expensive-to-maintain "old" equipment, despite repeated requests to replace the old equipment. In addition specialization was allowed to take over the operation to such an

extent that men would not work on any other task; and in the leaf collection area we have not used machinery to its full advantage but are instead using labor-intensive methods.

While it certainly was not my desire to see the income tax fail, it has in fact failed and we now can only take what advantage of the situation we can. We do have the opportunity to correct some of the unproductive practices of the past. It would be a serious mistake, in my judgment, to try and avoid eliminating antiquated systems at this point.

There are, however, certain very real considerations which need to be studied. Among these are that we cannot make a switch over to a volunteer Fire Department in the time left to make reductions. We need the cooperation of the Fire Department to make such a move. Training would have to be done and it would take time; time which we don't have. I am in no way backing off the previous statements that I made or my ultimate belief that the type of changeover which I suggested or a district system will ultimately come to be used.

To take care of leaves we need machinery not manpower. Since the Union has been in the City, refuse crews have not picked up leaves unless they were paid overtime. Refuse collection takes precedence over all other Public Works functions. The Street and Sewer Divisions are the units which pick up leaves and plow snow. Instead of proper leaf equipment which the Director of Public Works has requested, he has been forced to use front end loaders and men raking leaves...both highly unproductive and expensive.

There is a very difficult time ahead for all of us and I am afraid that it will get worse before it gets better. More money needs to be spent on adequate equipment and the implementation of new programs in all of the depart-

> ments rather than less to make the productivity increase. Stronger use must be made of the departments such as Planning, Inspections and Community Relations. The departments should not be cut at this time. It will be important to maintain a strong and positive image about this whole process...
>
> As to the ultimate success of the reductions and our ability to continue to provide services, that will depend entirely upon you. There must be support for any projected cuts and that support must continue.

The city's response to the defeat was one of suddenness: a 20% across-the-board work force cut that, among other things, forced the city to close one of its three fire stations. All forty-four school-crossing guards were laid off. Some recreation services were eliminated. Rubbish collection was curtailed, and fifteen positions in the service department were eliminated. Four of nine garbage trucks were taken out of service. The scooter-pick-up of garbage in the back yard gave way to curb pick-up. Residents were asked to put trash in plastic bags (See Appendixes C and D).

VII. Citizen Response

Many citizens were not only surprised, they were also dismayed. These things could not happen in an "All-American City." Elderly residents and owners of large homes with long driveways complained of the rubbish curtailments. Parents and PTA's were horrified at the lay-offs of the school guards. Protesters met with the City Manager over the closing of the fire station. (See Appendix E.)

VIII. The November Election

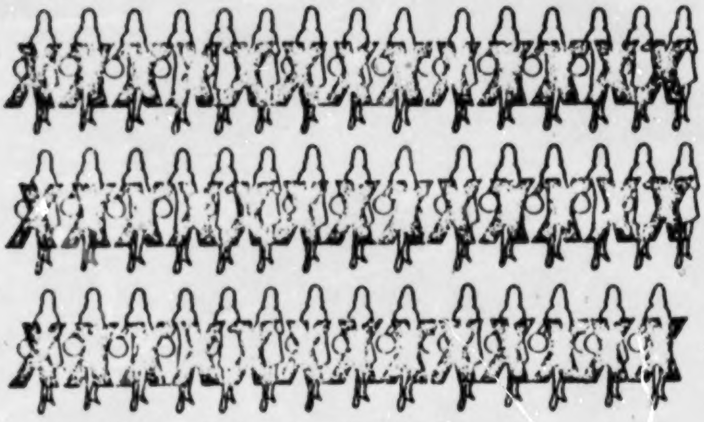
The City Manager and Council made sure that the request for a tax increase was placed on the ballot for the November general election. They believed that the reduction or elimination of many of the City's highly visible services and the ensuing citizen outcry would contribute to the passage of the levy. Staff persons who attended public meetings had returned with optimistic hopes for passage.

Citizens for Heights Income Tax Issue #2 was organized and activated. Half of their voluntary contribution of $10,000 was used to prepare and mail to residents the following:

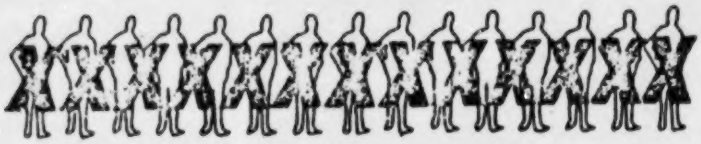
WHY ARE WE FACING THIS ISSUE?

Inflation has hurt us all . . . and City Hall is no different. The cost of providing municipal services has been rising much faster than the rest of the economy. Federal grants have been reduced severely, Inheritance tax revenues have been declining, and property tax revenues to the City have not risen significantly in recent years. To sum it up, our community's future is in jeopardy, and is the real issue that is being voted on on November 2.

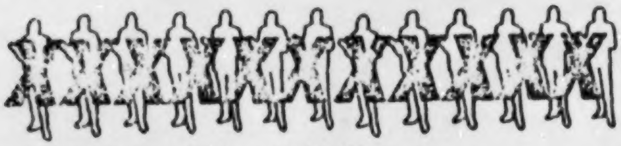
IF ISSUE #20 FAILS, THESE VITAL SERVICES, ALREADY CUT AS A RESULT OF THE DEFEAT OF THE TAX ISSUE IN JUNE, WILL NOT BE RESTORED.



- Crossing guards — cut from 44 to 0



- Police — cut from 99 to 84



- Firemen — cut from 75 to 62

- Closing of Fire Station #2

. . . AND A MINIMUM OF $100,000 MORE WILL BE CUT FROM EXISTING PROGRAMS SUCH AS:

- Summer Recreation Programs: Denison and Cumberland Pools, Cain Park Theatre, Playground Supervision
- Summer Jobs For Young People
- Maintenance of our parks, recreation facilities, center strips and public buildings
- Forestry

IF ISSUE #20 PASSES:

- Public Safety Forces will be restored to full strength: 75 firefighters, 9 9police officers and not less than 30 school crossing guards will be rehired
- Fire Station No. 2 will be re-opened
- All recreation programs and facilities will be reinstated
- All other services will be maintained at the present level
- We will be able to continue to attract competent, professional personnel

Note: If you are retired and/or have only income from pensions, annuities or investments, the tax increase will not affect you at all.

ISSUE #20: THINK IT OVER CAREFULLY BEFORE YOU VOTE, BECAUSE YOU LIVE IN CLEVELAND HEIGHTS AND YOU MUST LIVE WITH YOUR DECISION BUT WHATEVER YOUR DECISION, VOTE

GENERAL FUND EXPENDITURES

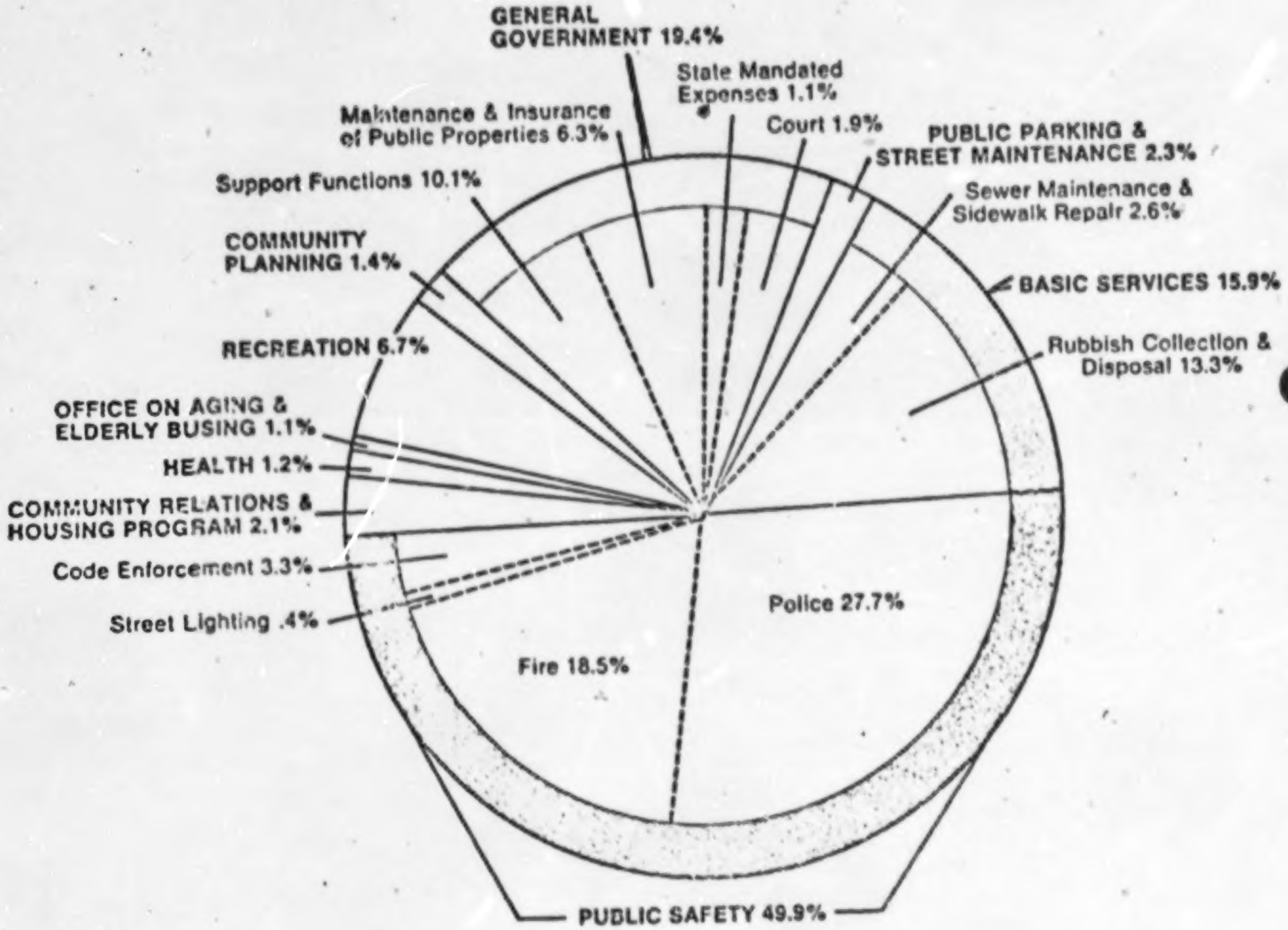
	January 1, 1976	August 1, 1976 (with reductions)	January 1, 1977 (estimated)
TOTAL	$7,787,465	$7,293,497	$6,774,982
Police	2,173,296	2,025,576	1,932,336
Fire	1,438,880	1,350,813	1,223,855
Health Department	92,755	84,239	65,231
Sanitation Department	837,111	745,383	618,744
Recreation (Parks, Pools, Pavilion, etc.)	520,436	485,330	437,254

On November 2, 1976, voters in Cleveland Heights, Ohio passed the 1/2% increase in income tax by a vote of 13,847 to 9,317.

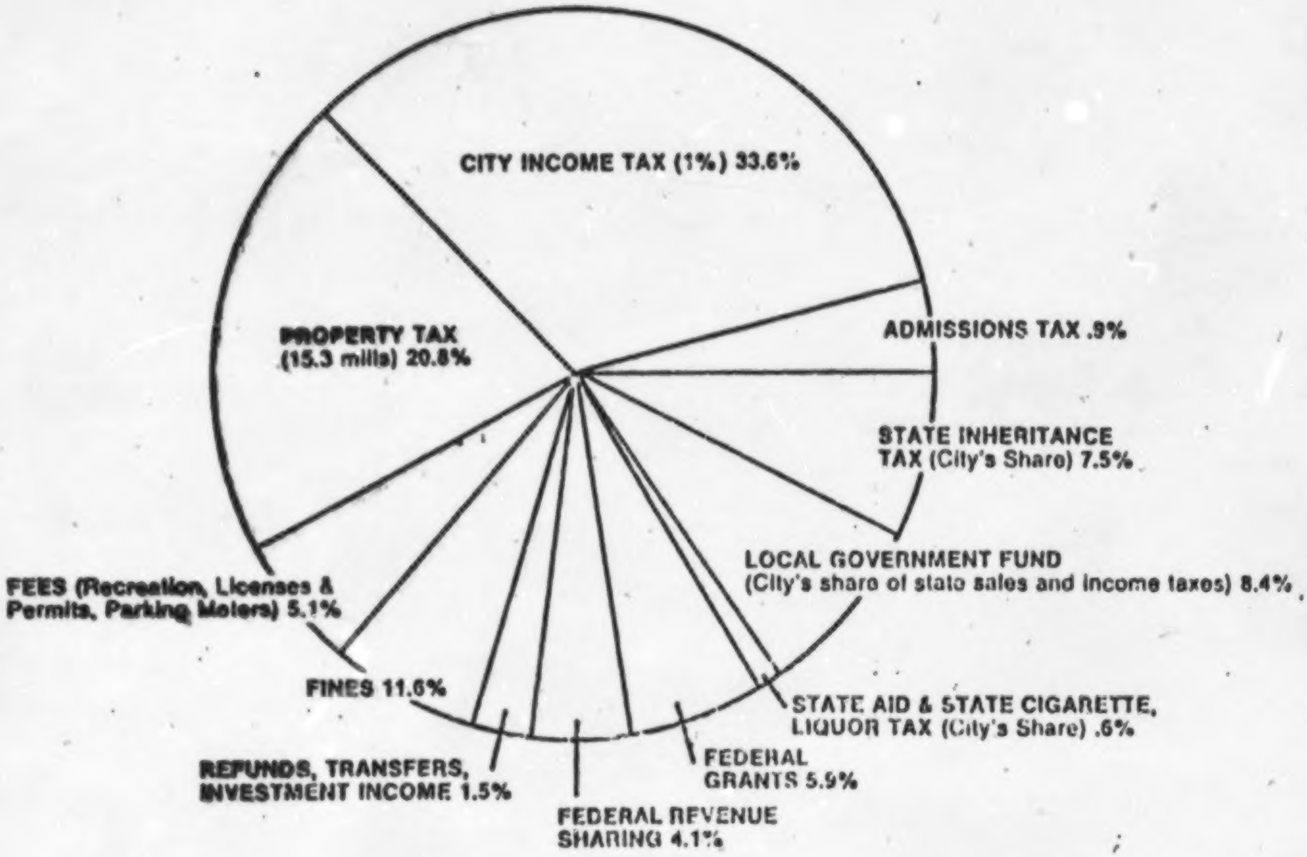
IX. Appendixes

Appendix A

1976 ADOPTED BUDGET



GENERAL FUND — RECEIPTS



APPENDIX B

CLEVELAND HEIGHTS FACT SHEET

GENERAL FUND RECEIPTS

	1974	1975	1976 (Original)	1976 (Revised)
Property Tax	1,365,951	1,398,227	1,417,840	1,417,840
Income Tax	2,139,979	2,275,289	2,300,000	2,300,000
Admissions Tax	48,991	62,465	60,000	60,000
Inheritance Tax	651,987	803,471	515,000	621,000
Local Government	563,137	518,269	572,000	572,000
State Aid & Cigarette & Liquor Tax	29,757	19,143	42,950	41,600
Federal Grants	279,514	282,537	402,663	393,255
Revenue Sharing	249,789	614,800	282,220	289,000
Fees	265,352	283,025	216,920	271,050
Fines	544,140	776,060	792,600	755,100
Licenses & Permits	75,696	99,343	84,470	80,000
Refunds, Transfers, Investment Income, etc.	105,450	96,690	148,630	139,000
TOTAL GENERAL FUND RECEIPTS	6,319,743	7,229,319	6,835,293	6,939,845
TOTAL RECEIPTS	6,319,743	7,229,319	6,835,293	6,939,845
TOTAL EXPENDITURES	6,329,022	7,383,115	7,787,465	7,293,497
	(9,279)	(153,796)	(952,172)	(353,652)
Beginning Balance	770,310	761,031	607,235	607,235
Year End Balance	761,031	607,235	(344,937)	253,583

Note: Classification of costs is basically the same as that used for official State of Ohio.
Revised to reflect most recent (9-27) information from County Auditor.
This figure should be 5% of the budget ($365,000) to cover contingencies & January 1977 operations.

CLEVELAND HEIGHTS FACT SHEET
GENERAL FUND EXPENSES

	1974	1975	1976 (Original)	1976 (Revised)
PUBLIC SAFETY				
Police	1,792,980	2,039,423	2,173,296	2,025,576
Fire	1,240,781	1,353,271	1,438,880	1,350,813
Street Lighting (City's Portion)	30,000	30,000	30,000	30,000
Code Enforcement	215,629	251,317	253,629	222,354
TOTAL PUBLIC SAFETY	3,279,390	3,674,011	3,895,805	3,628,743
HEALTH				
Health Department	85,845	94,619	92,755	84,239
Office On Aging	6,101	73,042	46,165	50,804
Commission On Aging	-0-	51	250	1,200
Elderly Busing	-0-	2,967	40,143	33,891
TOTAL HEALTH	91,946	170,679	179,313	170,134
COMMUNITY ENVIRONMENT				
Planning Department	75,810	80,900	104,961	90,147
Zoning & Planning Boards	2,722	2,623	2,900	3,300
Real Estate Program	-0-	-0-	-0-	-0-
TOTAL COMMUNITY ENVIRONMENT	78,532	83,523	103,461	93,447
BASIC UTILITIES				
Sanitation Department	714,952	782,236	837,111	745,383
Transfer Station	176,479	199,065	193,102	206,755
Sewer Maintenance	240,042	204,538	190,952	224,244
TOTAL BASIC UTILITIES	1,131,473	1,185,839	1,221,165	1,176,382

(over)

CON'T (Page 2)

	1974	1975	1976 (Original	1976 (Revised)
TRANSPORTATION				
Sidewalk's City Portion	11,695	8,101	9,893	9,893
Parking Meters	32,597	29,190	28,964	32,146
TOTAL TRANSPORTATION	44,292	37,291	38,857	42,039
RECREATION				
(Parks,Pools,Pavillion-etc.)	384,182	472,418	520,436	485,330
GENERAL GOVERNMENT				
Municipal Court	112,640	140,678	143,545	134,717
State Mandated Expenses (Unemployment, Workmen's Compensation) (etc.)	57,949	65,685	85,495	98,900
Maintenance & Insurance of Public Properties	411,827	442,274	486,208	355,582
Support Functions	736,791	1,110,717	1,113,180	1,108,223
TOTAL GENERAL GOVERNMENT	1,319,207	1,759,354	1,828,428	1,697,422
TOTAL GENERAL FUND EXPENDITURES	6,329,022	7,383,115	7,787,465	7,293,497

APPENDIX C

Personnel Summary

	12-31-75	5-16-76	8-1-76
City Manager	8	7	6
Finance	16	15	11
Law	5	4	4
Health	7	7	5
Community & Public Relations	2	3	2
Real Estate Program	–	–	2
Municipal Court (Visiting judge & temporary help not incl.)	11	11	11
Public Properties	11	9	9
Police - Classified	68(authorized)	65	65
Unclassified	34	30	19
Civilian (Excl. School Guards)	8	8	10
Youth Service	3	3	3
Fire - Classified	75(authorized)	72	62
Civilian	1	1	1
Building	15	14	11
Sewer & Street Crew (incl.Signal Repair)	25	27	26
Planning & Development	5	4	6
Parking Meters	2	2	2
Public Parks	11	11	11
Service Administration	5	5	3
Transfer Station	8	6	5
Sanitation & Refuse	43	40	25
Recreation Administration	2	2	2
Office on Aging	2	2	2
Elderly Busing	2	2	2
Garage	13	13	12
	382	363	306

APPENDIX D

Positions Not Filled Due to Freeze

		SAVINGS	
DEPARTMENT	REDUCTION	1976	ANNUAL
Finance - Commissioner of Data Processing	1	15,900	19,220
Law - Assistant Law Director	1	17,210	22,950
Building - Building Commissioner	1	17,570	26,470
Public Properties Construction Superintendent	1	19,830	20,230
Laborer	1	8,230	10,970
Service - Laborers	5	45,640	67,300
Fire - Officers	2	31,800	40,290
	12	156,180	207,430

LAY-OFFS EFFECTING THE GENERAL FUND*
(Personnel Costs Only)

DEPARTMENT	REDUCTION	1976 8/1/76	ANNUAL
Service & Garage	16	$90,770	$218,820
Fire	9	52,575	126,745
Police	9	39,185	94,475
Finance	4	16,360	39,475
Building	2	10,240	24,650
Health	1	6,265	15,120
City Manager's Office	1	3,040	7,325
Full-time employees	42		
School Guards		52,105	110,400
		270,540	637,010

*Federally funded positions not included.

APPENDIX E

Pick-up

We are now into the second week of do-it-yourself garbage can take-out. The weather so far has been relatively nice. We have not yet had to do this job in rain, snow, or sleet. But it's coming.

Therefore, it seems timely to inform the people of Cleveland Heights what the great savings involved in suspension of backyard pick-up will amount to on their yearly taxes. The figures from city hall are as follows:

The annual cost to the city is $250,000 with approximately 17,000 pick-ups per week. This results in a cost of $14.70 yearly per household or 28.3 cents per week, a small amount obviously since many received a notice last week on our cars at Severance from a small company that advertises a service to haul our refuse to the tree lawn for $2.25 per week.

Beyond the inconvenience, however, are several factors which should be considered: 1) the insistence upon plastic bags is ecologically unsound. Not only is plastic non-biodegradable but it is also a petroleum by-product. (City hall says the plastic will be shredded (at how much cost?) and put into a land fill).

2) The present cost of plastic bags is about 10 cents each and there is no reason to expect the price to remain stationary. Since most families will use four to five bags, the cost of 40 to 50 cents weekly already exceeds the 28 cents it is now costing for backyard pick-up.

3) The lifting and hauling of heavy garbage cans and other refuse is a physical impossibility for some and questionable for others. The job will fall primarily to those whose time is most available — children, housewives, the elderly and retired. The strain becomes even more formidable in Cleveland Heights with our large lots and long driveways.

4) This particular cut in city services is not to be restored even by passage of the city income tax.

It would seem that interested citizens should contact city hall now in an effort to restore this service before it is too late. Perhaps a special issue could be set for the November election to provide voter funds for this service separately from other city funds.

Fourteen dollars per year seems a small amount for a service which provides as much convenience, especially since the alternative solution will cost twice as much.

BEJ, Cleveland Heights Resident.

Cain Pool

I attended a picket recently during which the Ad Hoc Committee to Reopen the Cain Park Wading Pool submitted petitions with over 300 names of concerned citizens.

I was appalled at the attitude of Mr. Edwards who we gave the petitions to. It was obvious to me that he considered all our work, questions and suggestions with contempt, even to the point of suggesting that one person had done all the work, on her own, merely for publicity.

After insisting for the 'umpteenth' time that it is only a five minute walk to Cumberland Pool for Cain Park area residents (which one of the delegation factually refuted), Mr. Edwards proceeded to insist that one of the party had a child's wading pool and hose in her own backyard, implying that such a luxury negated her right to be interested in what happens to the Cain Park pool.

We are already being asked to provide our own crossing guards out of the goodness of our hearts and love for our 'All-American City.' What will we be asked to do next for the honor of paying high taxes? . . .

When asked why so much money was spent on advertising our city instead of on services to its residents, Mr. Edwards stated that the signs were more beneficial to the majority of Heights residents. When your home goes up in flames and our inadequate fire department can't get there in time, can we beat the flames with a sign?

KB.,
Cleveland Heights
Resident